

RIGHT OF WAY GUIDANCE MANUAL

ISSUED BY

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET

JANUARY 2007



Steve Damron

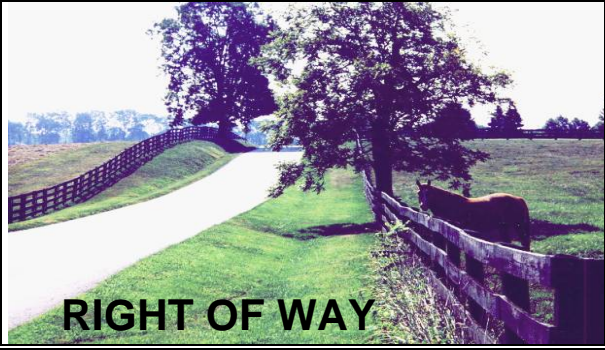
Director
Division of Right of Way and Utilities



Bill Nighbert

Secretary
Transportation Cabinet

Produced by Policy Support Branch
Division of Personnel

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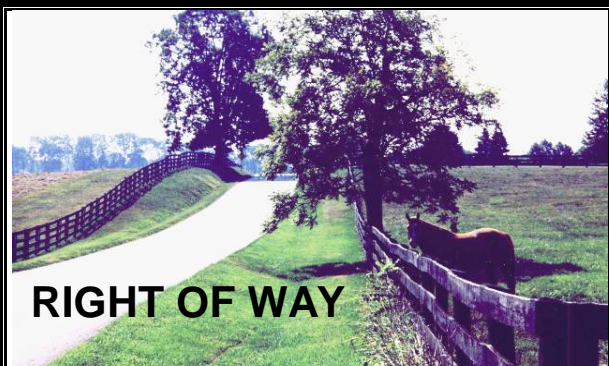
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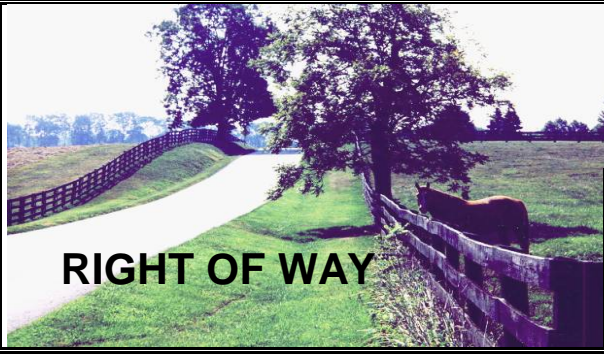
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	<p><i>Chapter</i></p> <p>INTRODUCTION</p>
	<p><i>Subject</i></p> <p>Design of This Guidance Manual</p>

ORGANIZATION & NUMBERING:

Chapter Title—The subject matter in the manual is divided into chapters. The chapter title appears in the upper right-hand corner of the first page of a subject and in the upper left-hand corner of any subsequent page.

Subject Title—The title of a subject appears in the upper right-hand corner of the first page of a subject and in the upper left-hand corner of any subsequent page.

“ROW” Prefix—Preceding each subject number, this prefix stands for the manual title *Right of Way Guidance Manual*.

Date—The latest issuance date of a subject appears at the bottom of each page of the subject. This date agrees with the latest issuance date shown for the subject in the Table of Contents (**ROW-01**).

Page Numbering—Each subject has its own page numbering, which appears at the bottom of each page.

LOCATING INFORMATION:

Two indexes appear at the front of the manual, and one index appears at the back:

- Ø **Table of Contents (ROW-01)**—This index at the front lists the titles of the manual’s chapters and their subjects, as well as other information, in numerical order. It includes the latest issuance dates of all the subjects. As the manual matures, these dates change.
- Ø **Alphabetical Index (ROW-02)**—This index at the front alphabetically lists key information in the manual. Generally, it directs the user to subject titles and to margin, paragraph, and subparagraph headings within subjects.
- Ø **Table of Exhibits (ROW-9000)**—This index at the back lists the manual’s exhibits, including forms, worksheets, diagrams, etc., by number and title.



**CROSS-
REFERENCES
IN MANUAL:**

Subject Numbers within Narrative—A subject number within the narrative on a page directs the user to more information about the subject.

QUESTIONS:

Whom to Contact—For answers to questions about the contents of the manual, please contact:

Division of Right of Way and Utilities

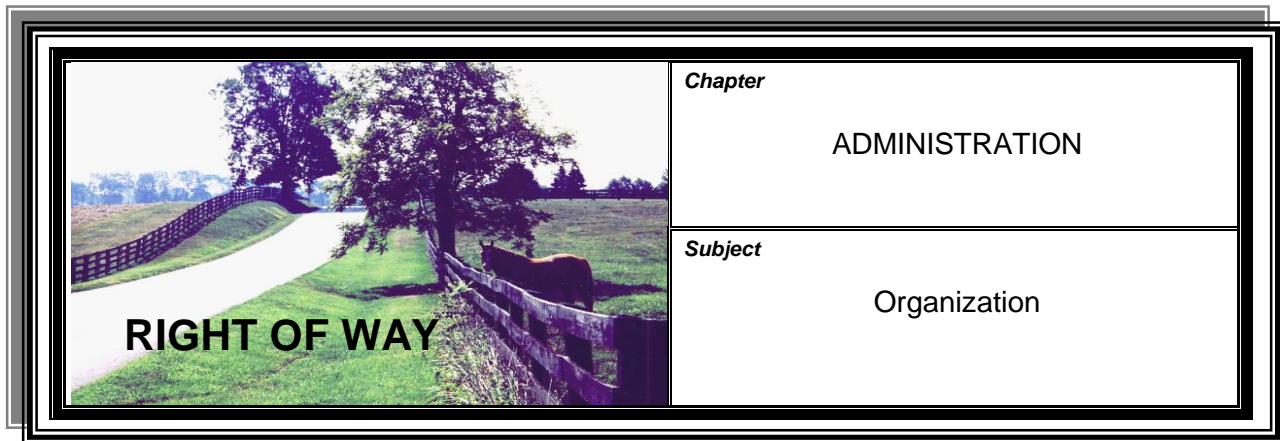
Transportation Cabinet Office Building
5th Floor East
200 Mero Street
Frankfort, KY 40622
(502) 564-3210

For copies of the manual, please contact:

Policy Support Branch

Transportation Cabinet Office Building
6th Floor West
200 Mero Street
Frankfort, KY 40622
(502) 564-4610

2 2 2

**OVERVIEW:**

The Division of Right of Way and Utilities is a component of the Office of Project Development within the Department of Highways. The division holds responsibility for the acquisitions of all rights of way, including:

- Ø Relocations of displaced persons in accordance with The Uniform Act
- Ø Utility and railroad relocations

This guidance manual addresses each function related to the acquisitions of rights of way, with the exception of the utility and railroad functions, which are in separate manuals. On all projects involving state or federal funding in any project phase, the division and its agents, sub-agents, and contractors are responsible for compliance with current federal regulations whether or not this manual reflects those requirements.

If a conflict exists between the federal regulations and the policies outlined in this manual, federal regulations prevail.

The division is decentralized, with staffs located in the Central Office and the 12 district offices throughout the state. The staffing and functions of these offices are as follows.

CENTRAL OFFICE:

Under the guidance of a division director, the Central Office has statewide responsibility for the development of policies and procedures to best ensure that it completes property acquisitions in a timely manner and in accordance with all applicable laws and regulations. Central Office personnel provide technical guidance and oversight and maintain various statewide records.

The Central Office structure of the Division of Right of Way and Utilities comprises five branches, each under the supervision of a branch manager, as follows:

- Ø Administration Branch
- Ø Appraisal Branch
- Ø Acquisition Branch (responsible for administration of design-build projects and any sub-agencies and consultants.)



**CENTRAL
OFFICE (cont.):**

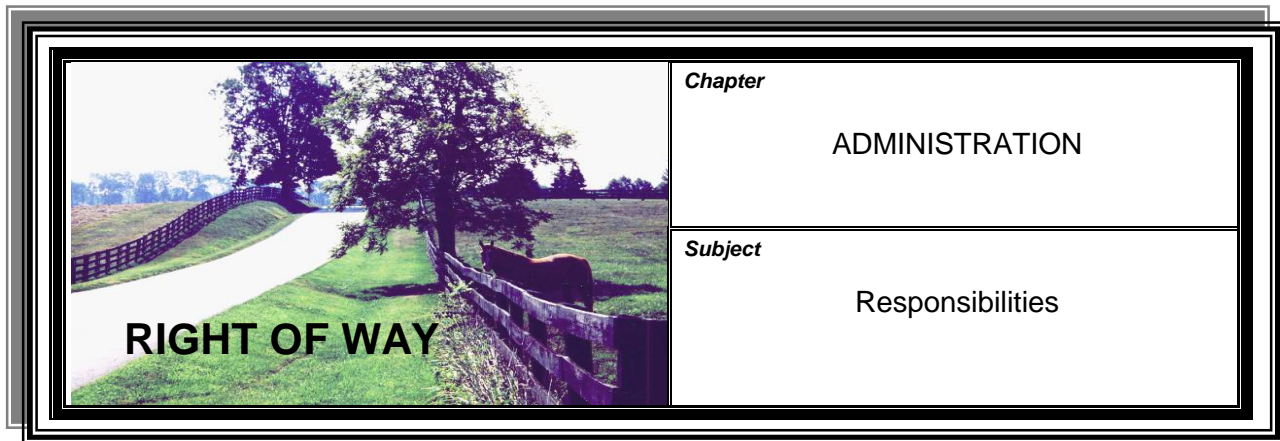
- Ø Relocation Branch
- Ø Utilities Branch (responsible for utility and railroad relocations)

**DISTRICT
OFFICES:**

The district offices are responsible for direct project delivery that is necessary to clear right-of-way. The organizational structure of each of the district offices mirrors that of the Central Office in all primary functions of the right-of-way process.

In each of the district right-of-way offices, a supervisor oversees a staff of technical personnel and right-of-way agents who meet qualifications outlined in the right-of-way agent class-code specifications. The supervisor is to ensure that his or her staff receives training as established by the Transportation Cabinet's *Human Resources Management Guidance Manual* and as described herein to ensure compliant project delivery.

2 2 2



OVERALL RESPONSIBILITIES OF DIVISION:

The Division of Right of Way and Utilities is responsible for acquiring the right-of-way for transportation projects. The policies and procedures described in this guidance manual assure compliance with all state and federal guidelines as outlined in 23 CFR Part 710 (**Exhibit 01**) and 49 CFR Part 24 (**Exhibit 02**).

The policies and procedures described herein cover the various functions of the acquisition process, including the Relocation Assistance Program for displaced persons, and ensure fair and equitable treatment of all persons affected as state and federal laws and regulations require. Only division staff or contract personnel meeting the minimum qualifications described in the Personnel Cabinet's *Class Specifications* administer these functions. Neither division nor district staff, sub-agents, or contract personnel are to be given an assignment in any acquisition function until they have:

- Ø Received training in that function
- Ø Worked sufficiently with an experienced person
- Ø Demonstrated a clear understanding of current policies and procedures

To promote training opportunities commensurate with the experience level of district staff, the district right-of-way supervisor is to promptly forward to the director of the Division of Right of Way and Utilities a copy of each new right-of-way agent's application for state employment. Sub-agents and contract personnel must be prequalified prior to being given any right-of-way responsibilities.

RESPONSIBILITIES OF CENTRAL OFFICE:

The Central Office responsibilities are to oversee all of the functions of the right-of-way program area. This includes but may not be limited to the following:



**RESPONSIBILITIES
OF CENTRAL
OFFICE (cont.):**

- Ø Managing the program for compliance
- Ø Advising district personnel
- Ø Performing compliance reviews and reports for the districts
- Ø Managing the program for compliance
- Ø Advising district personnel
- Ø Performing compliance reviews and reports for the districts
- Ø Compiling annual statistic reports
- Ø Tracking projects
- Ø Instigating training for all agents
- Ø Coordinating the delivery of the program with other federal and state agencies
- Ø Keeping the Director of Right of Way and customers apprised of all program issues and concerns

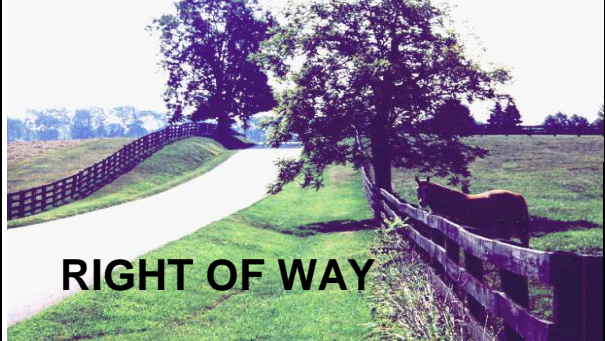
**RESPONSIBILITIES
OF DISTRICT
OFFICES:**

The district offices perform the same responsibilities of the Central Office at the project level of program development. Additionally, the district offices have the responsibility of helping citizens move with the least amount of disruption and in the most cost-effective manner.

**RESPONSIBILITIES
OF DISTRICT
RIGHT-OF-WAY
SUPERVISORS:**

District supervisors, with assistance and guidance from Central Office branch managers, provide oversight to the district right-of-way process to assure the compliance with state and federal laws and regulations. These supervisors oversee each function of the process in order to prevent conflicts of interest and to avoid fraud, waste, and abuse.

2 2 2

	<i>Chapter</i> ADMINISTRATION
	<i>Subject</i> Training

SOURCES OF TRAINING:

Due not only to the sensitivity of acquiring private property under the threat of condemnation but also to the requirements outlined in state and federal laws regarding acquisitions of private properties, it is essential that before an assignment in any function, all staff and contract personnel have training in the disciplines of right-of-way acquisition. District right-of-way supervisors are responsible for arranging for the training of staff members. Sources of training are as follows:

- Ø Assignment to work with an experienced staff member, either in the trainee's own district or in another district
- Ø Educational seminar presented by a recognized professional organization
- Ø Training seminar provided by the Federal Highway Administration
- Ø Training seminar conducted by the Division of Right of Way and Utilities


Central Office branch managers are to develop the following:

- Ø Training workshops that introduce right-of-way employees to the policies and procedures of specific areas of the acquisition process
- Ø Advanced training in the various disciplines as needed

The Central Office is to offer these training sessions upon request and as schedules permit.

Contract personnel and sub-agents of the Transportation Cabinet must also attend training sessions. The Central Office is to charge contract personnel and sub-agents a fee to offset the costs of the use of Central Office personnel and materials.

2 2 2

	Chapter ADMINISTRATION
	Subject Conflicts of Interest

POTENTIAL CONFLICTS:

An employee of the Division of Right of Way and Utilities or a contractor involved in the acquisition of a right-of-way has the responsibility to avoid any real estate activity that is or can be perceived as a conflict of interest. Activities that pose potential conflicts of interest for employees include:

- Ø Acquiring real estate for personal use when an employee knows a project is planned for the area in which the acquired property is located
- Ø Serving as an agent or appraiser of a property to be affected by a highway project
- Ø Acquiring a right-of-way from a state employee

Policies related to conflicts of interest are described in the following:

- Ø Kentucky Transportation Cabinet (KYTC) *Human Resources Management Manual*
- Ø Official Order 97129 of the Secretary of Transportation
- Ø Rules of the Commonwealth of Kentucky Executive Branch Ethics Commission

CENTRAL OFFICE EMPLOYEES:

A project involving property owned by an employee of the Cabinet's Central Office or by a member of his or her immediate family is to be reported to the Director of the Division of Right of Way and Utilities. If the director perceives a conflict of interest in making appropriate assignments, the director is to advise the State Highway Engineer, or his or her designee, of the potential conflict. The State Highway Engineer's office is to make all assignments in this situation.

DISTRICT OFFICE EMPLOYEES:

The district supervisor is to report to the Director of the Division of Right of Way and Utilities a project requiring the acquisition of real property from a district employee or from a member of the employee's immediate family as soon as the supervisor learns that the project affects the property. Personnel from another district or from the Central Office are to manage all aspects of this acquisition.




**RIGHT-OF-WAY
CONSULTANTS:**

Consultants and sub-agents of the KYTC are not to accept project assignments involving property owned by:

- Ø Themselves
- Ø Firms owned by themselves
- Ø Members of firms owned by themselves
- Ø Employees of their businesses
- Ø Subcontractors of their firms
- Ø Any members of the immediate families of those identified above

2 2 2

	<i>Chapter</i> ADMINISTRATION
	<i>Subject</i> Agent Identification

FORMS OF

IDENTIFICATION:

On the first meeting with a property owner, anyone representing himself or herself as being involved in the right-of-way acquisition process for the Transportation Cabinet is to show the property owner an official identification. The Cabinet representative is to use one or more of the following for identification purposes:


- Ø Photo identification card
- Ø Identification folder
- Ø Letter of assignment from the Division of Right of Way and Utilities

The Division of Technology provides state employee identification cards. Employees, consultants, and sub-agents of the Transportation Cabinet are to:

- Ø Carry their cards at all times while on official duty
- Ø Keep the cards safe, neat, and clean
- Ø Use the cards for official purposes only

Note: Identification folders or letters of assignment are to be managed in the same way as the identification cards.

2 2 2

	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Policy</p>

POLICY:

The Division of Right of Way and Utilities is to assist the Division of Planning and the Division of Highway Design in selecting the most appropriate and economically feasible roadway location by participating in environmental studies and cost studies of alternative routes. Projects are to be in an approved State Transportation Improvement Program (STIP) to be eligible for federal funding.

The division accomplishes the goal of choosing the preferred roadway location by:


- Ø Providing or assisting in the development of right-of-way impact studies early in the planning stages
- Ø Identifying socioeconomic impacts to the communities affected
- Ø Detecting disproportionate impacts to any minority group of people

Note: Sufficient replacement housing must be available for those being displaced by highway projects.

The following may need to be completed before proceeding with the project:

- Ø Community impact studies
- Ø Environmental justice studies
- Ø Relocation planning

2 2 2

	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Studies</p>

OVERVIEW:

Upon request, the district right-of-way personnel, qualified fee contractors, or sub-agents of the Transportation Cabinet provide input regarding social, economic, and environmental effects of proposed projects for preparation of:

- Ø Environmental impact statements
- Ø Environmental assessments
- Ø Categorical exclusions
- Ø Feasibility studies
- Ø Alternative route locations
- Ø Project scoping
- Ø Other assignments

Before the right-of-way staff can begin work on studies or estimates, the requesting division is to identify a project to which the staff can make charges.

**COST
ESTIMATES:**

The right-of-way staff, qualified fee contractors, or sub-agents of the Transportation Cabinet conduct field inspections of proposed routes to prepare cost estimates on the TC 62-203 form, *Right of Way Cost Estimate (Exhibit 03)*. The form is to include estimated costs for:

- Ø Acquisition
- Ø Relocation assistance
- Ø Property management
- Ø Known environmental mitigation

The individual making the project:

1. Completes the estimates
2. Signs and dates the estimates
3. Files the estimate, along with field notes and a parcel-by-parcel estimate of cost, in the project folder

Copies of all estimates are provided to the following:

- Ø Central Office Acquisition and Relocation Branches
- Ø District preconstruction engineer



**COST
ESTIMATES
(cont.):**

Note: A cost estimate is made to identify all properties with potential hazardous waste and includes an estimate of the cost to remediate such waste. Any properties in public ownership that may have the potential for functional replacement are to be identified and cost estimates provided.

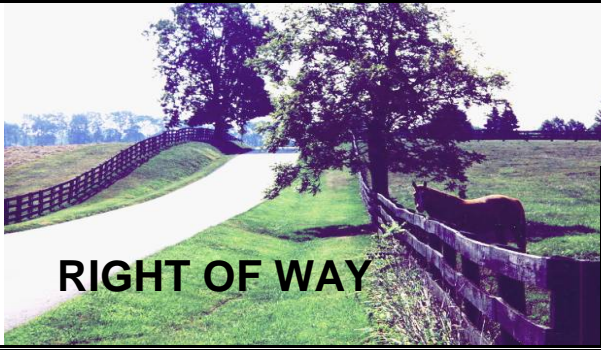
**WASTE AREA
ESTIMATES:**

Upon request by the Division of Highway Design, district right-of-way staff, qualified fee contractors, or sub-agents of the Transportation Cabinet provide cost estimates for acquiring waste areas. Generally, waste area sites are acquired in fee simple title. However, when advantageous to a community and the public, and with prior approval of the Federal Highway Administration on Interstate and National Highway Institute projects, waste area sites may be constructed on a temporary easement.

**ADVERSE-
EFFECTS
STUDIES:**

District right-of-way staff, qualified fee contractors, or sub-agents of the Transportation Cabinet may be asked to study possible adverse social, economic, and environmental effects related to a proposed project. Data obtained from such studies (including but not limited to the income levels of displaced families and the availability of replacement housing) is provided to appropriate Cabinet personnel for consideration in the environmental impact of various alternative corridors.

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	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Project Scheduling (Lead-Time)</p>

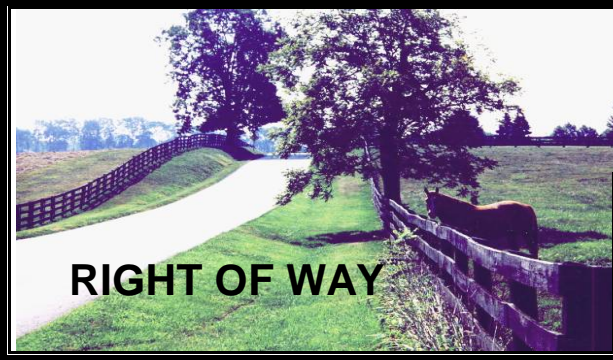
**LEAD-TIME
FACTORS:**

Lead-time, the time needed to clear right-of-way on a project, is established when right-of-way plans are delivered. Because of the wide diversity of projects, lead-time fluctuates but usually ranges from 8 months to 24 months. Among the factors considered when establishing lead-time are:

- Ø Availability of plans
- Ø Number of parcels and types of acquisitions
- Ø Number of parcels requiring relocation assistance
- Ø Anticipated expiration dates of 90-day notices
- Ø Number of improvements to be removed
- Ø Existence of hazardous substances
- Ø Time needed for condemnation proceedings

Note: Projects may not be advertised for construction until a right of entry has been secured for all right-of-way parcels. Exceptions have to be identified and supported.

2 2 2

	<i>Chapter</i> PROJECT DEVELOPMENT
	<i>Subject</i> Public Hearings

**23 U.S.
CODE 128:**

In compliance with 23 U.S. Code 128, the Cabinet is to provide the opportunity for the public to request a corridor or design public hearing for any minor federal aid project. Major projects (Environmental Analyses and Environmental Impact Studies) require public hearings.

**CORRIDOR
PUBLIC
HEARING:**

When the Cabinet elects to hold a corridor public hearing, the Cabinet conducts it before a route location has been approved and before the Cabinet has committed to a project. This hearing, usually presented in open forum, is held to assure that interested persons are afforded the opportunity to participate in the process of determining the need for and the location of a highway route or improvement.

At a corridor public hearing, district right-of-way staff informs the public of:

- Ø Right-of-way procedures
- Ø Studies of alternatives being considered
- Ø Estimated number of individuals, families, businesses, farms, and nonprofit organizations to be relocated by each alternative
- Ø Eligibility requirements and payment procedures of the Relocation Assistance Program
- Ø Methods used to assure that housing needs will be met

At the hearing, both acquisition and relocation assistance booklets are available to the public. A representative from the Office of Project Development is present to answer questions about right-of-way issues.

**DESIGN
PUBLIC
HEARING:**

When the Cabinet elects to hold a design public hearing, the Cabinet conducts it after the route location has been approved but before the Cabinet has committed to a specific design proposal. This hearing, usually presented in open forum, gives interested persons the opportunity to participate in determining the specific location and major design features of a highway.



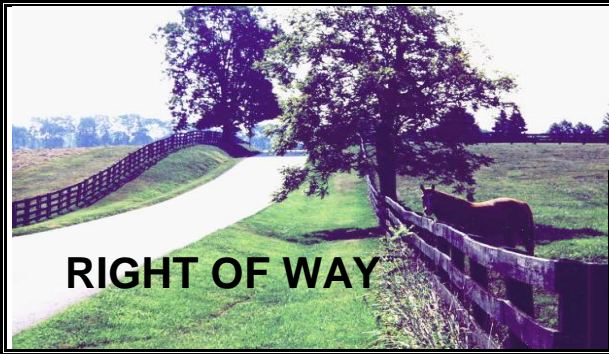
**DESIGN
PUBLIC**

HEARING (cont.): At a design public hearing, a printed project-specific statement is available for distribution. This statement outlines:

- Ø Various programs for which affected individuals may be eligible
- Ø Number of families and businesses to be relocated
- Ø Availability of residences that meet decent, safe, and sanitary housing requirements
- Ø Estimated time to acquire rights of way for the project

At the hearing, both acquisition and relocation assistance booklets are available to the public. Right-of-way personnel are present both before and after the hearing for discussion with affected individuals.

2 2 2

*Chapter*

PROJECT DEVELOPMENT

Subject

Plan Development

OVERVIEW:

Under the supervision of the Division of Highway Design, right-of-way plans are prepared in accordance with current right-of-way design standards and criteria. Although highway location and plan development are functions of the Division of Highway Design, a coordination of highway design and right-of-way personnel exists throughout the entire project-development process to assure that they appropriately address all concerns.

When right-of-way plans have been developed to a stage that indicates the existence of encroachments, the acquisition of right-of-way may not begin until encroachments are removed.

JOINT FIELD INSPECTION:

The district right-of-way supervisor, or a qualified representative, takes part in the plan-in-hand inspection and joint field inspection to ensure the effects of right-of-way are considered in establishing the location and design of the project.

The Division of Highway Design prepares and maintains inspection reports on the basis of recommendations from all members of the inspection party. Included with joint field inspection reports are current cost estimates that district right-of-way staff and district utility staff have prepared. Copies of the reports are filed in the right-of-way project file.

ACQUISITION PLANS:

These plans show the following:

- Ø Center line
- Ø Property lines
- Ø Each property owner's name and source of title
- Ø Parcel numbers
- Ø Topographic features
- Ø Profile and tentative grade

The source of each title is obtained from contact with property owners and from a search of the County Court Clerk's records.

The district right-of-way staff works closely with the highway design staff or the design consultant to ensure that each parcel's boundary is consistent with accepted appraisal procedures and that all property interests are identified and considered.



**ACQUISITION
PLANS (cont.):**

The highway design staff or the design consultant provides a copy of the recorded source deed or deeds for each parcel and places title information on the plans. Prior to formal submission of right-of-way plans to the Division of Highway Design, the right-of-way supervisor requests the assignment of an attorney to provide title reports.

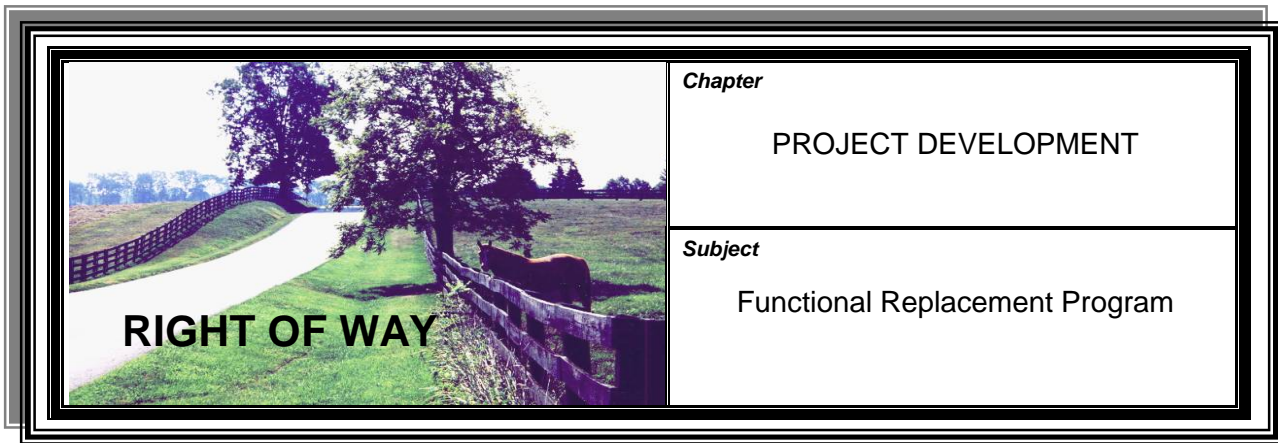
The Division of Highway Design provides the Division of Right of Way and Utilities with approved right-of-way plans for all projects, including those that local public agencies and sub-agencies are to acquire. Rights of way are acquired in accordance with approved plans. Acquisitions do not begin until authorized by the Director of the Division of Right of Way and Utilities.

**DISTRIBUTION
OF PLANS:**

Plans are copied and made available to the public upon request and upon receipt of compensation for the copies in accordance with requirements of the *General Administration Manual*. A copy of plan sheets showing how that property is being affected may be provided to each property owner at no cost.

Each preliminary plan sheet is stamped in red: "Preliminary—Subject to Change." All plans are considered preliminary until the Division of Construction has finalized the as-built plans.

2 2 2

**FUNCTION:**

The Functional Replacement Program provides an alternative method of acquiring and compensating for publicly owned property that provides an essential public service. Examples include:

- Ø Schools
- Ø Police stations
- Ø Fire stations

The Cabinet may provide compensation by functionally replacing the publicly owned real estate with another facility that provides equivalent utility. Excluded from these provisions are:

- Ø Utilities
- Ø Railroads
- Ø Land subject to the provisions of 23 USC 138 (4f properties)
- Ø Properties subject to 16 USC 470(f) (historic properties)

The use of functional replacement for real property in federal ownership shall be in accordance with the federal land transfer provisions in 23 CFR Part 710.601 (**Exhibit 01**).

Early identification of qualifying properties is key to the success of this method of acquisition. Qualifying properties are to be identified in the environmental document. The process is to begin well in advance of any other acquisition for the project.

PROCEDURE:

As soon as it is determined that a qualifying property is to be acquired by a project, the following steps are to be followed:

1. A request that outlines the type of property to be acquired and estimates the cost for its replacement is made to the Director of the Division of Right of Way and Utilities. The director makes the final decision as to whether a property qualifies for functional replacement.
2. Upon approval of the request, contact is made with the owning agency to determine whether there is an interest in functional replacement. The owning agency is advised that it has the option of accepting the amount of just compensation established by the appraisal process or accepting functional replacement.



**PROCEDURE
(cont.):**

3. The owning agency is to write to the district right-of-way supervisor a letter requesting consideration. This letter is to include:
 - Ø Explanation of why it is in the public interest for the Cabinet to acquire the property by this method
 - Ø Waiver of the owning agency's right to an appraisal if the request is approved
4. The Cabinet and, if applicable, the Federal Highway Administration review for approval the owning agency's letter of request.
5. Upon approval of the request, the owning agency and the Cabinet prepare and execute an agreement. At a minimum this agreement is to stipulate:
 - Ø That the owning agency has responsibility to develop plans and cost estimates for the Cabinet's approval

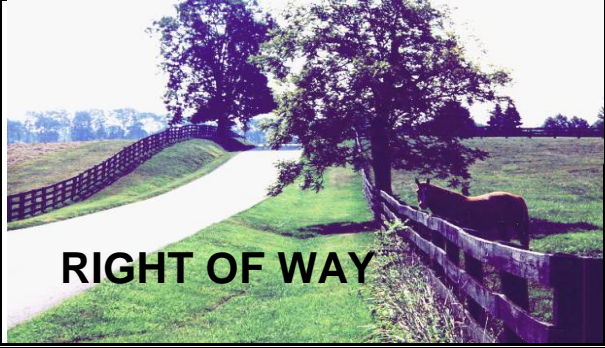
Note: Costs to increase capacity and to provide other improvements or enhancements are not eligible for consideration except where necessary to replace the public facility's utility. However, these costs may be necessitated by:

- ♦ Existing codes, laws, or zoning regulations
- ♦ Reasonable prevailing standards for the facility being replaced
- Ø Payment schedule for the owning agency's project (The Cabinet will make the final payment after it has inspected and approved the completed project.)
- Ø That the owning agency presents an executed deed to the abandoned site upon final payment by the Cabinet

The district right-of-way supervisor is responsible for the agency's adherence to the terms of the agreement. The state, through its agencies or contractors, oversees:

- Ø Purchase and construction of the replacement property
- Ø Reviews of all estimates and plans
- Ø Periodic inspection of construction throughout the construction period of the replacement facility

2 2 2

	<p><i>Chapter</i></p> <p>PROJECT DEVELOPMENT</p>
	<p><i>Subject</i></p> <p>Property Damages During Plan Development</p>

KRS 416.560(4): When doing fieldwork for plan development, workers have the right to enter private property, as outlined in KRS 416.560(4). Because of the need for timely plan development, the Cabinet cannot necessarily wait for an opportune time. Proceeding with fieldwork in these situations may result in property damages. Examples of compensable damages that survey work or core drilling may cause include:

- Ø Crop damages
- Ø Marketable timber losses

Note: Payment is not to be made for the right to enter upon the property.

**HIGHWAY DESIGN
GUIDANCE
MANUAL:**

The *Highway Design Guidance Manual* outlines the procedure of managing requests for compensation for property damages. (See **HD-305**, "Property Entry," for more information.)

2 2 2

*Chapter*

PROJECT DEVELOPMENT

Subject

Hardship & Protective Buying Acquisitions

**HARDSHIP
ACQUISITION:**

The purpose of a hardship acquisition is to alleviate a hardship to a property owner due to health, safety, or financial reasons. A request for hardship is to be considered on the basis of a property owner's written submission that supports health, safety, or financial reasons that create an undue hardship compared with others on the project. The owner is to document an inability to sell the property at its fair market value within a reasonable period of time because of the impending project. The district right-of-way supervisor is to submit the owner's letter with a recommendation to the Director of the Division of Right of Way and Utilities for review. The recommendation is to include estimated costs for the following:

- Ø Purchase of the property
- Ø Relocation assistance

**PROTECTIVE
BUYING
ACQUISITION:**

The purpose of a protective buying acquisition is to prevent:

- Ø Imminent development
- Ø Increased costs on a preferred location of a project

To receive approval from the Federal Highway Administration (FHWA) for protective buying, the Cabinet is to demonstrate that development of the property is imminent and that such development will limit future transportation choices. Increased costs may be one of the factors used to justify protective buying. The district right-of-way supervisor is to submit to the Director of the Division of Right of Way and Utilities a written request that includes:

- Ø Justification for the acquisition
- Ø Estimated cost for purchase of the property

**REQUESTING
APPROVAL:**

Prior to the Cabinet's obtaining final environmental approval, the Director of the Division of Right of Way and Utilities may request FHWA approval for advance acquisition. Examples include:



**REQUESTING
APPROVAL (cont.):**

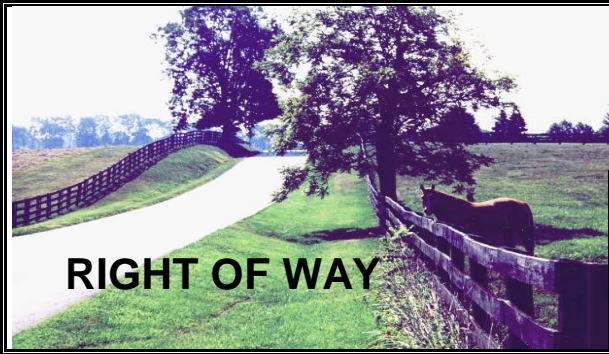
- Ø Hardship acquisition (due to health, safety, or financial reasons)
- Ø Protective buying acquisition (where substantial and imminent property development might unduly restrict the only reasonable highway location alternative)

Hardship and protective buying acquisitions do not apply to properties subject to provisions of 23 USC 138 or of 16 USC 470(f) until the required Section 4(f) determination and the Advisory Council on Historic Preservation procedures have been completed. For a property to be eligible for consideration for advance acquisition, the project must be included in the current approved transportation plan, and the appropriate public involvement requirements must have been met.

When a parcel has been approved for a hardship or protective buying acquisition, the normal procedures for acquisition are to be followed. If agreement cannot be reached through normal negotiations, condemnation action is not to be delayed but initiated as normal.

Hardship and protective buying acquisitions are not eligible for federal participation but may be credited toward Kentucky's share after normal right-of-way project authorization.

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*Chapter*

PROJECT DEVELOPMENT

Subject

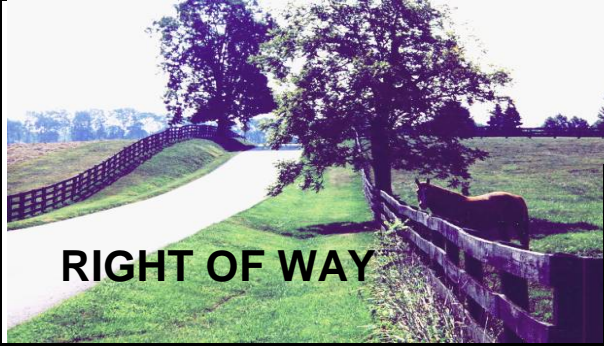
Ferry Acquisitions

POLICY:

It is the Transportation Cabinet's policy to acquire commercially operated toll ferries subject to the provisions of KRS 180.260 and KRS 180.276. KRS 180.260 authorizes the Cabinet to purchase or condemn any ferry that is located within 10 miles of an interstate bridge owned in whole or in part by the state if the Cabinet considers it necessary or advisable in order to protect the bridge from ferry competition. KRS 180.276 requires the Commonwealth to purchase any ferry that has been in continuous operation for at least 15 years prior thereto and that is located within 5 miles of an interstate bridge.

The Cabinet reserves the right to purchase and operate a privately owned ferry if the ferry is to be incorporated as part of the state highway system and is to be operated by the Cabinet in lieu of bridge construction.

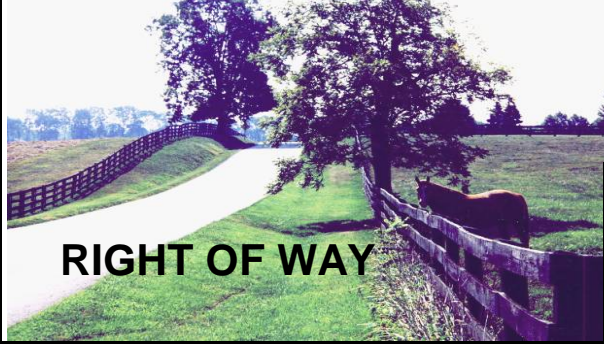
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	<p><i>Chapter</i></p> <p>PROJECT AUTHORIZATION</p>
	<p><i>Subject</i></p> <p>Policy</p>

POLICY:

The Director of the Division of Right of Way and Utilities shall authorize the district to begin right-of-way activities after the Transportation Cabinet Secretary approves right-of-way funding by signing the TC 10-1 form, *Project Authorization (Exhibit 04)*. If applicable, the division shall also receive Federal Highway Administration approval in writing or electronically. Funding may be for all activities or may be for only preliminary work. Right-of-way plans are to be on file in the Central Office and the district right-of-way office as soon as the plans are available.

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	<p><i>Section</i></p> <p>CENTRAL OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Project Files</p>

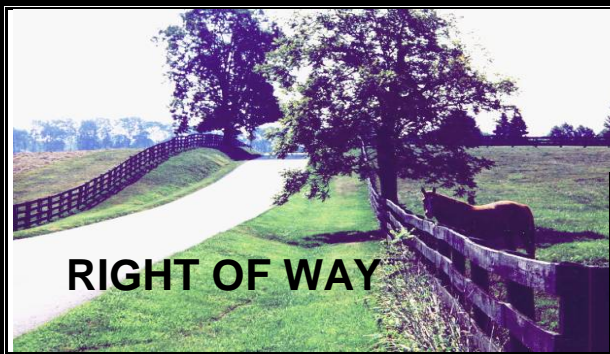
**CENTRAL OFFICE
MANAGEMENT
OF PROJECT
FILES:**

The following items are filed in the Division of Right of Way and Utilities:

- Ø Correspondence
- Ø Original approved appraisal
- Ø Recorded deeds
- Ø Other project-related items

Once the division receives authorization of a project, the division's Records and Billing Section establishes a project file with individual parcel files, where hard copies or electronic copies of all subsequent documentation concerning each parcel is filed.

2 2 2

**Section**

CENTRAL OFFICE PROCEDURES

Subject

Federal Projects

OVERVIEW:

When using federal funds for any phase of a project, the Transportation Cabinet acquires rights of way in compliance with:

- Ø *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (The Uniform Act)—(Exhibit 05)*
- Ø *Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24)—(Exhibit 02)*
- Ø *Right-of-Way and Real Estate (23 CFR Part 710)—(Exhibit 01)*

**REQUEST
FOR FHWA
AUTHORITY:**

After the Cabinet authorizes right-of-way, the Director of the Division of Right of Way and Utilities submits a request to the Federal Highway Administration (FHWA) for authority to proceed with right-of-way acquisition. The FHWA receives its authorization request from federal fiscal accounts. The division may not begin right-of-way acquisitions until it has received FHWA authority in either hard copy or electronic form. The Cabinet is to prepare a project agreement in accordance with 23 CFR Part 630, Subpart C and is to base the agreement on acceptable estimates for the costs of acquisitions and relocations. On interstate and mega-projects, the Director of the Division of Right of Way and Utilities is to submit the following to the FHWA Realty Officer for approval:

- Ø Right-of-way plans
- Ø Project agreements
- Ø Cost estimates

**PRELIMINARY
AUTHORITY:**

If the Transportation Cabinet Secretary has authorized preliminary funds, the director requests authority to proceed with preliminary activities such as:

- Ø Developing a project report
- Ø Securing title reports
- Ø Compiling relocation worksheet data

The district right-of-way supervisor is to submit a written request to the director for authority to begin appraisal work and complete appraisals as a preliminary right-of-way activity. The request is to include:

- Ø Parcel number(s) for which authority is requested
- Ø Estimated cost to write the appraisals and conduct first-stage reviews
- Ø Date final right-of-way plans and National Environmental Policy Act approval are expected



**PRELIMINARY
AUTHORITY (cont.):**

- Ø Benefits expected from completing appraisals early

Absent FHWA approval, property may not be acquired under preliminary authority. Once the Secretary authorizes full funding, the director requests authority to acquire property and relocate displacees.

**REQUESTS FOR
ADVANCE
ACQUISITIONS:**

The FHWA may approve requests for advance acquisitions for:

- Ø Health or financial hardship reasons
- Ø Protective buying (where substantial and imminent property development might unduly restrict the only reasonable highway location alternative)

Note: A written justification for advance acquisition must be approved by the FHWA and placed in the parcel file.

The FHWA may consider a significant increase in cost an element justifying protective buying. However, the FHWA can grant approval only after the Cabinet has:

- Ø Given official public notice that the selected location is the preferred or recommended alignment
- Ø Held a public hearing or has afforded an opportunity for a public hearing

Hardship and protective buying acquisitions shall not apply to properties subject to provisions of 23 USC 138 or 16 USC 470(f) until the required Section 4(f) determination and the Advisory Council on Historic Preservation procedures are completed. Acquisitions of such properties shall not influence the environmental assessment of the project.

Hardship and protective buying acquisitions may not be funded with federal monies; they are to be charged to the Commonwealth of Kentucky only. After a right-of-way has been authorized, the hardship and protective buying acquisitions may be credited toward the Commonwealth of Kentucky's share of the project.

**AUTHORIZATION
OF PROJECT:**

Upon receipt of FHWA authority, the director notifies the chief district engineer to proceed with FHWA approved right-of-way activities and forwards:

- Ø Copies of the TC 10-1 form, *Project Authorization (Exhibit 04)*
- Ø FHWA letter of authorization PR-1
- Ø Set of approved reproducible right-of-way plans

**OFFICIAL
ORDER:**

The director prepares for the Transportation Secretary's signature an Official Order authorizing acquisition of right-of-way using eminent domain procedures afforded the Commonwealth of Kentucky by law.

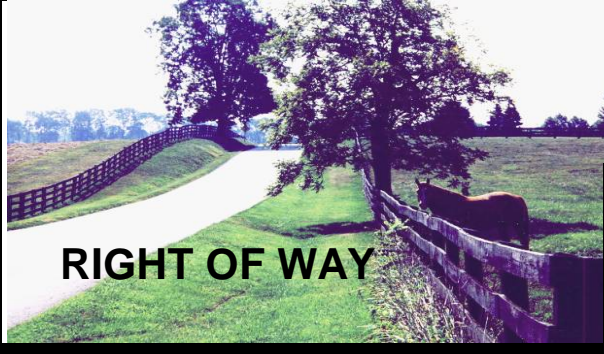


**CLEARANCE OF
RIGHT-OF-WAY:**

Original deeds acquired in the name of the Commonwealth of Kentucky (or copies of the deeds if acquired in the name of a local public agency) are to be permanently filed in the division's project files. The director notifies the proper authorities when the project's right-of-way is clear.

Note: The right-of-way is not clear until all parcels have been acquired by deed and the structures removed. The only exceptions are (1) when the Interlocutory Judgment has been filed and the money posted with the court or (2) when the right of entry has been approved. These infrequent exceptions are to be approved by the FHWA prior to requesting authorization for construction and are to be noted on the plan sheets prior to bid letting.

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	Section CENTRAL OFFICE PROCEDURES
	Subject State Projects

COMPLIANCE: The Transportation Cabinet acquires rights of way on state-funded projects in compliance with:

- Ø Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (The Uniform Act)—**(Exhibit 05)**
- Ø Uniform Government-wide Regulations (49 CFR Part 24)—**(Exhibit 02)**
- Ø Right of Way and Real Estate (23 CFR Part 710)—**(Exhibit 01)**

This procedure not only affords equal treatment of property owners but also meets federal guidelines in case the Cabinet ultimately uses federal funds for any phase of a state-funded project.

AUTHORIZATION OF PROJECT:

After the Cabinet authorizes right-of-way funds for a project, the Director of the Division of Right of Way and Utilities notifies the chief district engineer to proceed with right-of-way activities and forwards:

- Ø Copies of the TC 10-1 form, *Project Authorization* **(Exhibit 04)**
- Ø Set of approved reproducible right-of-way plans

PRELIMINARY AUTHORITY:

If the Transportation Cabinet Secretary has authorized preliminary funds, the director notifies the district to proceed with preliminary activities such as:

- Ø Developing a project report
- Ø Securing title reports and appraisals
- Ø Compiling relocation worksheet data

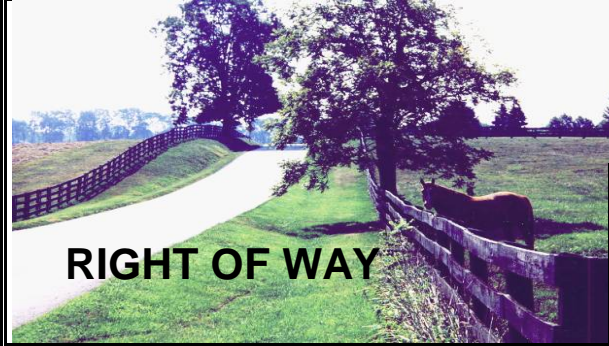
In no case may property be acquired under preliminary authority. Once the Secretary authorizes full funding, the director notifies the district to acquire property and relocate displacees.

OFFICIAL ORDER: The director prepares for the Transportation Secretary's signature an Official Order authorizing acquisition of right-of-way using eminent domain procedures afforded the Commonwealth of Kentucky by law.

CLEARANCE OF RIGHT-OF-WAY:

Original deeds acquired in the name of the Commonwealth of Kentucky (or copies of the deeds if acquired in the name of a local public agency) are to be permanently filed in the division's project files. The Director of the Division of Right of Way and Utilities notifies the proper authorities when the project's right-of-way is clear.

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	<p>Section</p> <p>CENTRAL OFFICE PROCEDURES</p> <hr/> <p>Subject</p> <p>Rural Secondary Projects</p>
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OVERVIEW:

Rural secondary road projects, which are mainly resurfacing jobs, are usually handled by local governments. These projects sometime include work on small bridges. Rights of way on these projects are to follow all applicable state laws for procurement and execution. If there is federal money involved in the project, all federal regulations are to be followed in the same way as any other state project with federal aid. Acquisitions of rights of way on rural secondary projects are limited to roads currently in the rural secondary system or those that are to be included in that system. Either a local public agency or the Cabinet may acquire such a right-of-way.

AUTHORIZATION OF PROJECT:

The Division of Right of Way and Utilities receives from the Division of Program Management a completed TC 10-1 form, *Project Authorization (Exhibit 04)*, which authorizes the project's funding and describes its:

- Ø Limits
- Ø Conditions
- Ø Related responsibilities

Note: A TC 10-1 form also authorizes subsequent changes to a project.

Upon receipt of approved plans, the Director of the Division of Right of Way and Utilities notifies the chief district engineer that right-of-way activities may proceed and then forwards:

- Ø Copies of the funding authorization
- Ø Set of reproducible plans

OFFICIAL ORDER:

The director of the Division of Right of Way and Utilities prepares for the Kentucky Transportation Cabinet Secretary's signature an Official Order authorizing acquisition of right-of-way using eminent domain procedures afforded the Commonwealth of Kentucky by law. If the Cabinet is to acquire right-of-way, the Cabinet modifies the Official Order to reflect Cabinet acquisition.

CLEARANCE OF RIGHT-OF-WAY:

Original deeds acquired in the name of the Commonwealth of Kentucky (or copies of the deeds if acquired in the name of a local public agency) are to be permanently filed in the division's project files. The director notifies the proper authorities when the project's right-of-way is clear.

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**Section**

CENTRAL OFFICE PROCEDURES

Subject

Acquisition Procedures by Sub-Agents of
the Kentucky Transportation Cabinet or
Local Public Agencies

**AUTHORIZATION
OF PROJECT:**

The Division of Right of Way and Utilities receives from the Division of Program Management a completed TC 10-1 form, *Project Authorization (Exhibit 04)*, which authorizes the project's funding and describes its:

- Ø Limits
- Ø Conditions
- Ø Related responsibilities

Note: A TC 10-1 also authorizes subsequent changes to a project.

At this point, the project authorization is handled like any other transportation project. The project completed by a sub-agent of the Kentucky Transportation Cabinet (KYTC) or a local public agency (LPA) is to be fiscally constrained before authorization. Right-of-way authorization requests are to include:

- Ø Plans
- Ø Cost estimates
- Ø Project agreement

Upon receipt of approved right-of-way plans, the Director of the Division of Right of Way and Utilities notifies the district right-of-way supervisor to advise the local public agency or sub-agent to proceed and then forwards to the district right-of-way supervisor and the Federal Highway Administration:

- Ø Copies of the funding authorization
- Ø Set of reproducible plans

OFFICIAL ORDER: The Director of the Division of Right of Way and Utilities prepares for the Transportation Secretary's signature an Official Order authorizing acquisition of right-of-way using eminent domain procedures afforded the Commonwealth of Kentucky by law.

**DISTRICT
RIGHT-OF-WAY
SUPERVISOR**

RESPONSIBILITIES: The district right-of-way supervisor is responsible for:

- Ø Right-of-way project oversight on LPA or sub-agent projects
- Ø Review and approval of work and payment requests



**DISTRICT
RIGHT-OF-WAY
SUPERVISOR
RESPONSIBILITIES
(cont.):**

Ø Review and approval of work and payment requests

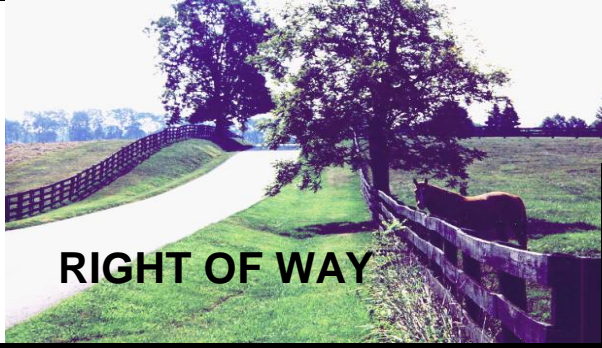
Note: All right-of-way activities are to comply with the Uniform Act and proper right-of-way procedures.

**CLEARANCE OF
RIGHT-OF-WAY:**

Original deeds acquired in the name of the Commonwealth of Kentucky (or copies of the deeds if acquired in the name of a LPA) are to be permanently filed in the division's project files. The Director of the Division of Right of Way and Utilities notifies the proper authorities when the project's right-of-way is clear.

Note: Authorization for project construction by sub-agents of the KYTC is to follow the same requirements as those for the KYTC. See **ROW-402-3**, "State Projects," for further information.

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	<p><i>Section</i></p> <p>CENTRAL OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Transportation Cabinet Acquisitions for Finance and Administration Cabinet Projects</p>

**TRANSPORTATION
ACQUISITIONS
FOR FINANCE:**

By mutual agreement, the Transportation Cabinet is to acquire real property for the Finance and Administration Cabinet (Finance) upon request. For such acquisitions, the Transportation Cabinet is to follow the policies and procedures in this guidance manual except in specified cases where Finance policy takes precedence.

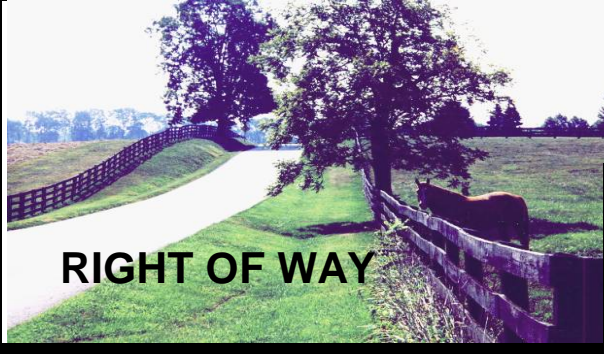
**RECORDING
ACQUISITIONS:**

Deeds are to be taken in the name of the Commonwealth of Kentucky for use by and benefit of Finance. Records of these acquisitions are to be maintained with other project files.

**RECORDING
EXPENSES:**

Agents are to keep records of expenses incurred while performing work on Finance projects. Such expenses are to be charged and inter-accounted to the project identification furnished by Finance.

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	Section CENTRAL OFFICE PROCEDURES
	Subject Design/Build Projects

FINAL RULE:

The Final Rule establishing federal regulations for design/build projects became effective January 9, 2003, and is identified in 23 CFR 710.313 (**Exhibit 01**).

**PROJECT
ACTIVATION
POLICIES:**

When right-of-way acquisition services are to be handled in the design/build contract, each proposal document shall address the following guidelines:

- Ø The contractor shall submit in the proposal an executed certification that he/she has received a copy of the approved *Right-of-Way Manual* and will comply with the described procedures, including the Kentucky Transportation Cabinet's (KYTC's) right-of-way forms. In lieu of adopting the Cabinet's approved acquisition policies, the contractor may submit written acquisition policies and procedures to the Division of Right of Way and Utilities for approval before beginning right-of-way activities.
- Ø Before beginning right-of-way activities, the contractor shall submit a written relocation plan that provides for a reasonable time for the orderly relocation of residents and businesses on the project as provided in 49 CFR 24.205 (**Exhibit 02**).
- Ø The acquisition consultant shall provide a Right-of-Way Status Progress Report and a quality control system. The report shall reflect the status of:
 - ◆ Appraisals
 - ◆ Appraisal reviews
 - ◆ Negotiations
 - ◆ Relocation assistance
 - ◆ Condemnations

The Status Progress Report is to be current within seven days and shall be submitted to the district right-of-way supervisor weekly as well as be maintained in the Division of Right of Way and Utilities program. Additionally, any of these files are to be up-to-date and available upon request by the Cabinet or the Federal Highway Administration.



**PROJECT
ACTIVATION
POLICIES (cont.):**

- Ø Before authorizing acquisition activities, the contractor shall submit to the Division of Right of Way and Utilities a proposed schedule for right-of-way acquisition for review and approval. The schedule shall comply with the Federal Uniform Act and include:
 - ◆ Information regarding appraisal and appraisal review
 - ◆ Time period for negotiations
 - ◆ Time frame for completing the relocation assistance program if applicable
- Ø Also, before approving acquisition activities the roadway contractor shall not:
 - ◆ Begin construction on any parcel
 - ◆ Take any action that may impair the safety of or be coercive toward owners of any properties on the project not yet acquired
 - ◆ Disrupt utility services to any occupied properties on the project
 - ◆ Conduct any open burning:
 - Within 1,000 feet of an occupied dwelling
 - Violating any policies of the Cabinet

Note: If right of entry is pursued on a parcel that is leased or occupied by a tenant, approval from the tenant or lessee is required prior to entry for roadway construction. Notes regarding permission for entry are to be added to the certification and plans.

- Ø The roadway contractor shall provide for adequate access to all occupied properties at all times.
- Ø Any right-of-entry agreement or consent and release involving the area of a proposed right-of-way may be pursued but only after the owner of the property being sought has been fully advised of the acquisition process and his or her right to just compensation. If the owner is agreeable to executing a right-of-entry agreement or consent and release, the roadway contractor shall not enter upon the property until the appraiser and review appraiser have:
 - ◆ Viewed the property to be acquired
 - ◆ Obtained photographs of the property in its existing condition

**ACQUISITION
AUTHORITY:**

Immediately after a contract has been awarded, the district office shall prepare and submit to the Division of Right of Way and Utilities a cost estimate for right-of-way acquisition and a Relocation Assistance Report if applicable. The contractor shall submit to the Division of Right of Way and Utilities for approval the names of the acquisition team, including:

- Ø Right-of-way project manager
- Ø Title attorney
- Ø Appraisers
- Ø First-stage review appraiser



ACQUISITION**AUTHORITY (cont.):**

- Ø Buyers
- Ø Relocation assistance agents
- Ø Closing agent

Note: No offers to purchase any rights of way shall be made until right-of-way activities are authorized. Right-of-way authorization may not be requested until there is an approved National Environmental Policy Act (NEPA) document for the project by the Department of Environmental Analysis.

**ACQUISITION
COMPLIANCE:**

All right-of-way acquisition activities shall comply with the Federal Uniform Act and the Cabinet's right-of-way acquisition policies.

**RIGHT-OF-WAY
CLEARANCE
CERTIFICATION:**

A project is not advertised for construction until the Cabinet has obtained right of entry to all parcels by either negotiations or condemnation action. For design/build projects, the right-of-way certification may be based on parcel-by-parcel features or by project section. The agreement or contract with the contractor shall specify the procedures required for certification. The roadway contractor shall not enter upon any parcel or section of parcels until the Division of Right of Way and Utilities has received a right-of-way clearance certification.

The right-of-way clearance certification letter shall specify:

- Ø Parcel numbers
- Ø Names of all applicable owners
- Ø Statement that the Cabinet has possession of the properties based on:
 - ◆ Right-of-Entry Agreement
 - ◆ Deed of Conveyance
 - ◆ Right of entry issued by the appropriate court


If the properties acquired involve improvements, the right-of-way clearance certification letter must specify that the occupants have:

- Ø Received the offer of relocation assistance, including replacement housing if applicable
- Ø Vacated the improvements

**IMPROVEMENT
REMOVALS:**

Unless otherwise specified in the roadway contract, the roadway contractor shall be responsible for the demolition and removal of all improvements acquired for the new rights of way. The disposal of any improvements acquired outside the limits of the new rights of way shall be at the discretion of the Division of Right of Way and Utilities. Sub-agents of the KYTC are to comply with the environmental commitments found in the NEPA approval.

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	<p><i>Section</i></p> <p>DISTRICT OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Project Files</p>

**DISTRICT OFFICE
MANAGEMENT
OF PROJECT
FILES:**

Project files are maintained with separate folders for the following:

- Ø Project authorization
- Ø General correspondence
- Ø Approved appraisal summaries
- Ø Contracts
- Ø Plan revisions
- Ø Comparable sales books
- Ø Sales of improvements
- Ø Individual acquisition and relocation parcel

Hard copies or electronic copies of documents and correspondence pertaining to a parcel are filed in the appropriate parcel folder. (Usually, a preliminary project folder containing all project-related information is maintained until the project is authorized.)

Each branch should include a required checklist for project and parcel files. Each checklist needs to include:


- Ø Dates of accomplishments
- Ø Date sent to Central Office

All parcels' files should be entered into the Division of Right of Way and Utilities database (RWU) if available.

Note: Insufficient supporting documentation for projects and parcel files on quality assurance reviews can jeopardize project funding.

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	Section DISTRICT OFFICE PROCEDURES
	Subject Supervisory Responsibility for Project Planning

RESPONSIBILITIES OF DISTRICT SUPERVISOR:

At least once a month the district right-of-way supervisor is to:

- Ø Review the Preconstruction Status Report (Pre-con Report) for projects advancing to the right-of-way phase
- Ø Notify the Acquisition Branch of changes in plan due dates if design completion is not on schedule
- Ø Update project estimates using the TC 62-203 form, *Right of Way Cost Estimate (Exhibit 03)*, if design completion is on target and plans are scheduled for submittal

Note: Updated estimates are to include sufficient justification for any difference—increase or decrease—between a project's current estimates and its enacted Six-Year Highway Plan projected costs.

- Ø Request assignment of an attorney to provide title reports if the district attorney is unable to provide them (the chain of title is searched back at least 35 years and submitted on a title report); the request, which is to be sent by memo to the Office of Legal Services and to the Central Office Division of Right of Way and Utilities, is to include:
 - ◆ Estimated number of parcels requiring title reports
 - ◆ Description of the type of properties needing title reports
 - ◆ Specific date by which title reports are needed
 - ◆ List of any special needs, such as mineral titles

Note: Reports are not required for parcels whose acquisitions involve minor temporary easements only.

- Ø Review and discuss with the appropriate branch manager the need for:
 - ◆ Appraisers
 - ◆ Negotiators
 - ◆ Relocation agents
- Ø Verify that a project report has been prepared if a fee appraiser or acquisition consultant is to be used
- Ø Review and approve right-of-way issues for sub-agents and local public agents on their projects



**RESPONSIBILITIES
OF DISTRICT
SUPERVISOR**

(cont.):

Upon receipt of authorization to proceed, the district right-of-way supervisor is to:

- Ø Prepare and enter into the computer system appropriate project and parcel data
- Ø Compare plan data to identify items requiring plan changes with:
 - ◆ Title reports
 - ◆ Relocation assistance contacts
 - ◆ Utility information
- Ø Request the district project manager to effect necessary changes in plans
- Ø Ensure acquisition progress is entered in the appropriate project status report as it occurs; continue reporting as long as a project remains active

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	<p><i>Section</i></p> <p>DISTRICT OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Inspection for Hazardous Materials</p>

**INSPECTION
PROCEDURES:**

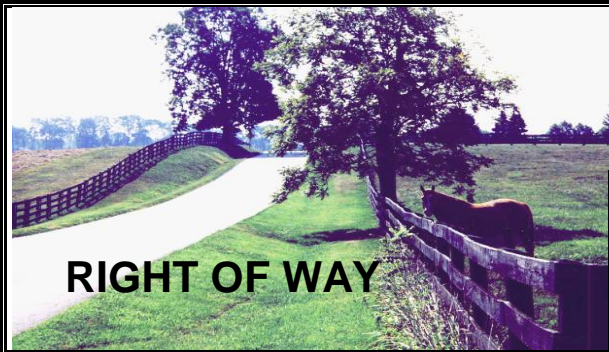
Upon authorization to proceed with acquisitions, the district property management agent is to inspect all property to be acquired to determine whether any parcel contains hazardous materials or underground storage tanks (USTs) that were not identified in the National Environmental Protection Act documentation. Should signs of hazardous materials or USTs be observed, the right-of-way supervisor is to request appropriate testing as outlined in **ROW-1204**, "Hazardous Materials and Underground Storage Tanks." All acquired improvements, except those retained by the owner, are to be inspected by the Division of Environmental Analysis for the presence of asbestos-containing material (ACM). The supervisor is to request ACM inspection and abatement as outlined in **ROW-1205**, "Inspection & Abatement of Asbestos-Containing Materials." The district is to:

- Ø Submit to the Central Office a list of all properties having hazardous materials, along with estimated costs for remediation
- Ø Recommend to the Director of the Division of Right of Way and Utilities appropriate steps relative to the acquisition of these properties

During inspection, photographs of improvements and of USTs being acquired are to be made. The photographs are to be retained for future property management needs.

Before purchasing properties at their approved appraised values, the Cabinet may require owners to perform appropriate clean-up procedures. The Director of the Division of Right of Way and Utilities is to advise the district of the procedures to follow when negotiating for parcels containing hazardous materials. This work can be advanced more quickly by referencing the approved environmental documentation for the project.

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**Section**

DISTRICT OFFICE PROCEDURES

Subject

Relocation of Human Remains

**REQUESTING
GRAVE
ASSESSMENT:**

Upon authorization to proceed with acquisitions, the district right-of-way supervisor is to confirm that the Division of Environmental Analysis has assessed all affected cemeteries for their historical significance (Section 4(f) determination) and the presence of Native American graves.

If an assessment has been completed, the district right-of-way supervisor is to send a copy of the clearance notice from the Division of Environmental Analysis, along with the information below, to the Relocation Branch Manager. If an assessment has not been completed, the district supervisor is to send the following information with a request for assessment to the district environmental coordinator and send copies to the Relocation Branch Manager:

- Ø Number of cemeteries within the right-of-way limits
- Ø Location of each cemetery the project affects
- Ø Number of graves affected in each cemetery
- Ø Description of each cemetery and the way the project affects the cemetery
- Ø Plat of each disinterment cemetery showing:
 - ◆ Location of the cemetery
 - ◆ Boundary—by distance and bearings—of the cemetery
 - ◆ Way the proposed project affects the cemetery
 - ◆ Each grave to be relocated and the grave number
 - ◆ Name of the remains in each grave (if the name is unknown, the plat is to designate the remains as "Unknown")

Note: The Division of Highway Design, in accordance with the *Highway Design Manual*, is to provide the plat of each disinterment cemetery.

- Ø Grave relocation agent's estimate of cost for the grave relocation project

Note: The agent's estimate of cost is to be prepared as outlined in ROW-1303, "Preparing to Relocate Human Remains."



**REQUESTING GRAVE
ASSESSMENT (cont.):**

Ø Other pertinent information, such as:

- ◆ Names of the owner of the property and the owner of the cemetery
- ◆ Owners' relationships to those interred
- ◆ Possibility of relocating remains to another part of the disinterment cemetery
- ◆ Name and location of the nearest perpetually maintained public cemetery

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	Section DISTRICT OFFICE PROCEDURES
	Subject Rural Secondary Road Projects

COMPLIANCE: Local governments usually handle rural secondary road projects, which are mainly road-resurfacing jobs and occasional small-bridge work, Rights of way on the projects are to follow all applicable state laws for procurement (KRS 45a). If there is federal money involved in the project, all federal regulations are to be followed the same as any other state project with federal aid.

**RESPONSIBILITIES
OF DISTRICT
SUPERVISOR:**

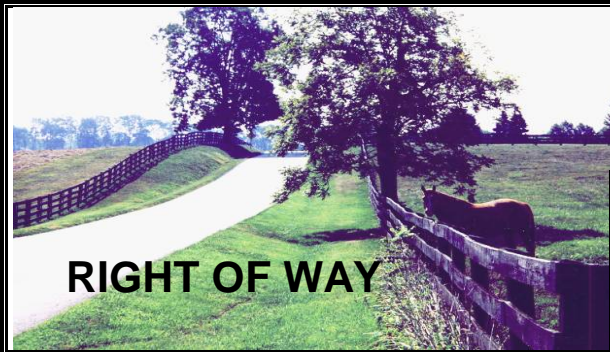
Upon receipt of the director's notice to proceed, the district right-of-way supervisor is to:

- Ø Check deed descriptions against the plans and prepare deeds
- Ø Prepare a letter to the head of the local government, transmitting:
 - ◆ One set of plans
 - ◆ Unexecuted deeds
 - ◆ Information for counties acquiring right-of-way for rural secondary road projects
- Ø Specify in the transmittal letter the project's priority and the date the local government is expected to have its obligations completed
- Ø Provide a copy of the transmittal letter to the:
 - ◆ District utility agent
 - ◆ Director of the Division of Right of Way and Utilities
- Ø Assist the local government in its efforts to secure right-of-way to whatever extent is practical

Note: Neither the Cabinet nor the local government may request donations.

- Ø Advise the Central Office of the local government's progress through routine status reports
- Ø Recommend action to be taken when the local government's efforts appear unsuccessful
- Ø Check and forward all documents to the Central Office when the local government has fulfilled its obligations

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**Section**

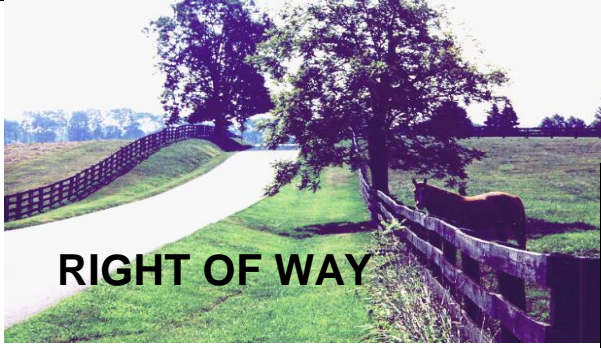
DISTRICT OFFICE PROCEDURES

SubjectAcquisition Procedures by Sub-Agents of
the Kentucky Transportation Cabinet or
Local Public Agencies**RESPONSIBILITIES
OF DISTRICT
SUPERVISOR:**

Upon receipt of the Director of the Division of Right of Way and Utilities notice to proceed, the district right-of-way supervisor is to:

- Ø Prepare a letter to the head of the local public agency, transmitting one set of plans and, if applicable, the unexecuted deeds
- Ø Specify in the transmittal letter the project's priority and the date the public agency is expected to have its obligations completed
- Ø Provide a copy of the transmittal letter to the district utility agent and to the Director of the Division of Right of Way and Utilities
- Ø Advise the Kentucky Transportation Cabinet (KYTC) sub-agent of their responsibilities for compliance with state and federal transportation programs
- Ø Verify that the sub-agent has a current copy of the approved *Relocation Assistance Manual* and *Right of Way Manual*
- Ø Assist the public agency in its efforts to secure a right-of-way and to comply with all state and federal regulations found in the *Right of Way Guidance Manual*
- Ø Advise the KYTC sub-agent that all persons delivering these programs for a right-of-way are to meet the same requirements and qualifications as:
 - ◆ State appraisers
 - ◆ Relocation agents
 - ◆ Negotiators
- Ø Conduct routine oversight reviews and prepare quality assurance reports on the delivery of the right-of-way program
- Ø Advise the Central Office of the public agency's progress through weekly status reports
- Ø Recommend actions to be taken when the public agency's efforts appear unsuccessful or are not in compliance with state and federal regulations
- Ø Review all documents for compliance with state and federal regulations and forward them to the Central Office when the public agency has fulfilled its obligations

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	<p><i>Section</i></p> <p>DISTRICT OFFICE PROCEDURES</p>
	<p><i>Subject</i></p> <p>Transportation Cabinet Acquisitions for Finance and Administration Cabinet Projects</p>

OVERVIEW: By mutual agreement, the Transportation Cabinet is to acquire real property for the Finance and Administration Cabinet (Finance) upon request. Policies and procedures described in this manual are to be followed for such acquisitions except in specified cases where Finance policy takes precedence. Right-of-way acquisitions on these requests are to follow all applicable state laws for procurement and execution. If federal funds are involved in a project, then all federal regulations are to be followed.

RECORDING ACQUISITIONS: Deeds are to be taken in the name of the Commonwealth of Kentucky for use by and benefit of Finance. Records of these acquisitions are to be maintained with other project files.

RECORDING EXPENSES: Agents are to keep records of expenses incurred while performing work on Finance projects. Such expenses are to be charged and inter-accounted to the project identification furnished by Finance.

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	<p><i>Section</i></p> <p>LOCAL PUBLIC AGENCIES & SUB-AGENTS OF TRANSPORTATION CABINET</p>
	<p><i>Subject</i></p> <p>Contracting Agreements</p>

TERMS OF AGREEMENT:

A local public agency or a sub-agent of the Kentucky Transportation Cabinet (KYTC) is to acquire rights of way in accordance with Cabinet's approved policies and procedures on all federal and state projects. All right-of-way work is to comply with The Uniform Act, even if it is not described in this manual. A local public agency or a sub-agent of the KYTC may develop and use its own procedures and policies if approved by the KYTC and the Federal Highway Administration. The agreement between the Cabinet (state agency) and the local public agency or sub-agent of the KYTC is to outline the responsibilities of each agency and to include but not be limited to:

- Ø Agency's name in which the title to the property is to be acquired
- Ø Each agency's share in the costs associated with the project
- Ø Agency having responsibility for instituting condemnation actions
- Ø Agency responsible for arrangements with affected utility companies to provide for adjustments to their facilities

Note: Arrangements are to be made as soon as possible to allow completion of such work prior to award of a contract. In any case, a notice of at least 30 days is to be given to the utility companies so that they may comply with KRS 416.140-3, which concerns utility companies on state highways.

- Ø Agency responsible for any expenses incurred for adjustments to railroad facility crossing installations

Note: The Utilities Branch of the Division of Right of Way and Utilities is responsible for any plans or technical assistance, including easements, necessary in connection with railroads.

- Ø Agency responsible for the removal of the following located within the right-of-way prior to award of a contract:
 - ◆ Buildings
 - ◆ Fences
 - ◆ Other obstructions




**TERMS OF
AGREEMENT
(cont.):**

- Ø All personnel used to deliver the right-of-way functions. (These personnel are to be precertified and prequalified by the state in the same manner as any other state employee.)
- Ø All files and work subject to state or federal review

Upon satisfying all of the preceding conditions, the local public agency or the sub-agent of the KYTC is to send the original recorded deeds to the district office, if the title to the right-of-way was acquired in the name of the Commonwealth of Kentucky.

If the title was acquired in the name of the local public agency or the sub-agent of the KYTC, a copy of the deed is to be submitted to the district office and forwarded to the Central Office.

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	<p>Section</p> <p>LOCAL PUBLIC AGENCIES & SUB-AGENTS OF TRANSPORTATION CABINET</p>
	<p>Subject</p> <p>Acquisitions for Transportation Enhancement Activities</p>

OVERVIEW: Transportation enhancement projects are federally funded under the TEA-21 Highway Bill. They are not necessarily road projects but are to have a clear transportation connection since they are using federal transportation funds.

REQUIREMENTS: Transportation enhancement activities involve acquisition, management, and disposition of real property. The relocation of residents and businesses is not permitted, since this is an ancillary transportation program and condemnation may not be used without approval of the Central Office Division of Right of Way and Utilities. Any relocation of families, individuals, and businesses are governed by the general requirements of the federal aid program found in Titles 23 and 29 of the Code of Federal Regulations (CFR).

However, a local public agency or a sub-agent of the Kentucky Transportation Cabinet (KYTC) acquiring real property for transportation enhancement activities lacking the power of eminent domain is to comply with The Uniform Act (**Exhibit 05**) by meeting the requirements under 49 CFR Part 24.101(a)(2)—(**Exhibit 02**). The requirements are as follows:

- Ø Prior to making an offer for the property, the local public agency or the sub-agent of the KYTC is to advise the owner that it is unable to acquire the property if negotiations fail to result in an amicable agreement.
- Ø An appraisal is to be obtained from the state's prequalified list of appraisers and be reviewed by state review appraisers.
- Ø The local public agency or the sub-agent of the KYTC is also to present to the owner a written offer to purchase the property, based on just compensation as established by an approved appraisal.
- Ø All transportation activities are to follow all approved KYTC policies and procedures found in this guidance manual.

Real property acquired with transportation enhancement activities funds is to be managed in accordance with the property management requirements contained in 23 CFR Part 710, Subpart D (**Exhibit 01**). Any use of the property for purposes other than those for which the transportation enhancement activities funds were provided is not permitted without Federal Highway Administration approval (see 23 CFR Part 710.511).




REQUIREMENTS

(cont.):

These acquisitions are to be tracked separately and are to be available for:

- Ø Oversight reviews
- Ø Fiscal accounting on a quarterly basis


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	<p><i>Chapter</i></p> <p>PROPERTY ACQUISITION ALTERNATIVES</p>
	<p><i>Subject</i></p> <p>State & Local Government Contributions of Right of Way</p>

POLICY: Real property owned by state government or by a local government and incorporated within a federally funded project can be used as a credit toward the matching share of the project costs. Credit cannot exceed the matching share required by the project agreement and must be at fair market value. The project agreement is to have been executed after June 9, 1998.

Note: 23 CFR Part 710.507 (**Exhibit 01**) identifies exemptions and other qualifiers to state or local government contributions to a federally funded project.

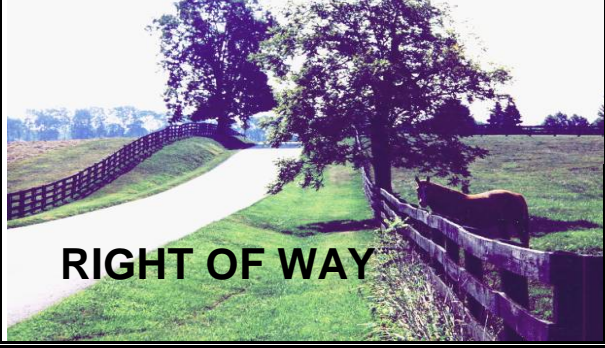
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	<i>Chapter</i> APPRAISERS & COURT WITNESSES
	<i>Subject</i> Policy

POLICY:

Appraisers shall establish a fair value for property to be acquired. Appraisers shall have no direct or indirect personal or contemplated future personal interest in property to be appraised. Employment of or compensation to appraisers is not contingent upon values derived for property to be appraised. Appraisers and review appraisers affirm adherence to this policy by signing a certification to that effect on each appraisal report.

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	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Assignment of Appraisers</p>

WHEN AN APPRAISAL

IS NOT REQUIRED: There are two instances when an appraisal is not required:

- Ø When the owner is donating property (However, the owner must release the agency from having to prepare an appraisal.)
- Ø When the agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less; a waiver valuation shall be:
 - ◆ Prepared by a right-of-way person that sufficiently understands the local real estate market
 - ◆ Based on a review of available data

PROCEDURES FOR ASSIGNING APPRAISERS:

The district right-of-way supervisor, with review-appraiser assistance, is to assign staff appraisers, if available, to appraise parcels of a project.

As projects require, the following are to discuss the need for appraisers and review appraisers:

- Ø District right-of-way supervisor
- Ø Appraisal manager
- Ø Director of the Division of Right of Way and Utilities

The district supervisor is to:

- Ø Recommend to the project manager and the Director of Right of Way and Utilities any need for contract appraisers and a right-of-way consultant
- Ø Complete the recommendation no later than the date for joint inspection of final plans

Note: Accompanying the recommendation is to be a project report prepared by a qualified staff or fee appraiser. The report is also forwarded to the appraisal manager, who uses the parcel-by-parcel summary to estimate costs and to project the time required for completing the appraisals.

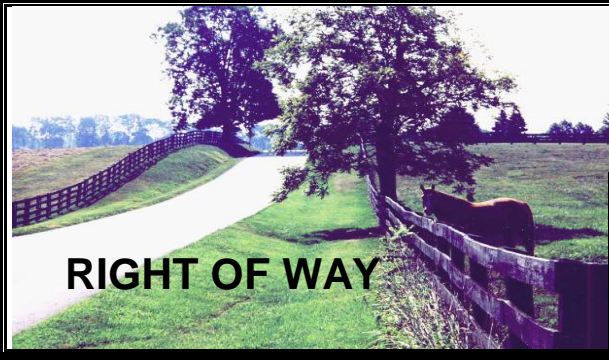


**PROCEDURES
FOR ASSIGNING
APPRAISERS****(cont.):**

If fee appraisers are to be assigned, the Division of Right of Way and Utilities forwards a purchase request for appraisers to the Kentucky Transportation Cabinet Division of Purchases, which then:

- Ø Creates a solicitation for letters of interest
- Ø Posts the solicitation on the Finance and Administration Cabinet's eProcurement website

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	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Prequalification of Fee Appraisers</p>

APPRAISER PREQUALIFICATION COMMITTEE:

By Official Order 94541, the Transportation Cabinet has created an Appraiser Prequalification Committee composed of the:

- Ø Director of the Division of Right of Way and Utilities
- Ø Appraisal Manager
- Ø Assistant State Highway Engineer for Project Development

The committee:

- Ø Uses established procedures to assure the availability of qualified fee appraisers
- Ø Determines minimum requirements necessary to make acceptable appraisals for the Cabinet

Near the beginning of each fiscal year, advertisements providing appraisers the opportunity to request to become prequalified fee appraisers are placed in three major newspapers. These advertisements outline the general qualifications required to be approved as a prequalified fee appraiser for the Cabinet.

APPRAISER QUESTIONNAIRE:

Applicants interested in fee appraisal work are to complete the TC 62-3 form, *Experience Questionnaire for Fee Appraiser (Exhibit 06)*, furnished by the Division of Right of Way and Utilities. The questionnaire, which outlines the applicant's education, experience, and training, is evaluated to determine whether the applicant has the necessary qualifications to meet the Cabinet's requirements. Representative appraisal work is also reviewed to determine whether the applicant has the necessary appraisal training, experience, and expertise.

APPRAISER EXAM:

A comprehensive appraisal exam has been developed for use in the prequalification of fee appraisers. The exam consists of three parts:

- Ø Part I, *General Real Estate and Appraisal*
- Ø Part II, *General and Residential Applications*
- Ø Part III, *Commercial and Income Producing*



**APPRAISER
EXAM (cont.):**

To prequalify for basic appraisal assignments, applicants must pass Part I and Part II. To prequalify for the more complex appraisal assignments, applicants must also pass Part III.

The prequalification exam is given in the Central Office under the supervision of the Appraisal Manager, who, along with one Central Office reviewer, checks and scores each applicant's completed exam. The exam is scheduled on the basis of the:

- Ø Number of new applicant requests
- Ø Cabinet workload

An applicant may not take the exam more than once in a 90-calendar-day period. Two unsuccessful attempts to pass the exam suspend an applicant's opportunity at prequalification for a two-year period from the date of the last exam.

**PREQUALIFYING
SPECIALTY
APPRAISERS:**

Unusual properties sometimes require the services of a specialty appraiser, recognized as an expert in a specific field. Such an appraiser may prequalify for a particular appraisal problem upon submission of a resumé for review by the Appraiser Prequalification Committee and an interview with Cabinet appraisal staff.

**PREQUALIFYING
FORMER STATE
EMPLOYEES:**

An appraiser who voluntarily left state employment for reasons other than retirement may not be prequalified until one year after his or her employment ended. Such an appraiser is deemed a state employee until all salary, termination pay, and payments representing annual leave have been made. A former state employee who has been out of state service for one year or longer must apply and complete the prequalification process.

**REVOCATION OF
PREQUALIFICATION
STATUS:**

Reasons to revoke an appraiser's prequalification status may include but are not limited to any one of the following situations:

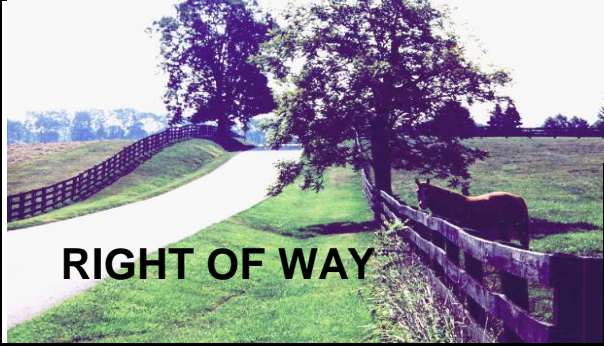
- Ø Appraiser's work has been unsatisfactory.
- Ø Three years have passed since submission of satisfactory work.
- Ø Appraiser has failed to complete assignments within a reasonable time.
- Ø Appraiser has failed to furnish additional documentation determined to be necessary by review appraisers or to answer federal ineligibility notifications in a satisfactory manner.
- Ø Appraiser has plagiarized material from other appraisers.



**REVOCATION OF
PREQUALIFICATION
STATUS:**

The Appraisal Manager is to provide written notice to an appraiser whose prequalification status has been revoked. Prior to revocation, the appraiser is to be given an opportunity to respond to allegations that prompted the revocation. To be reconsidered for fee appraisal work, the appraiser is to reapply and complete the entire prequalification process.

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	<p><i>Section</i></p> <p>PROPOSAL</p>
	<p><i>Subject</i></p> <p>Solicitation of Proposal</p>

**SELECTION OF
PREQUALIFIED
APPRAISERS:**

Agreements are executed with individual appraisers and in some cases appraisal firms. Appraisers that respond to solicitations for services posted on the Finance and Administration Cabinet's eProcurement website are invited to view the project and plans. Letters of interest and submitted fee proposals are received and evaluated. Members of the evaluation team may include:

- Ø Division of Right-of-Way and Utilities supervisor, or designated representative
- Ø Central Office review appraiser
- Ø Division of Right of Way and Utilities' Appraisal Branch Manager
- Ø Observing member from the Division of Purchases

Selection of one or more prequalified appraisers is based on an evaluation that considers such factors as the following:

- Ø Responsiveness to the solicitation
- Ø Experience
- Ø Knowledge and experience in the location of the project
- Ø Quality of work
- Ø Cooperation
- Ø Timeliness
- Ø New or seldom-used contractor
- Ø Convincing personality and good public relations demeanor
- Ø Price
- Ø Disadvantaged Business Enterprise

Upon completion of the evaluations, recommendations for awards of contracts are sent to the Division of Purchases for execution of the contract. Work may not commence until the applicant has signed a contract.

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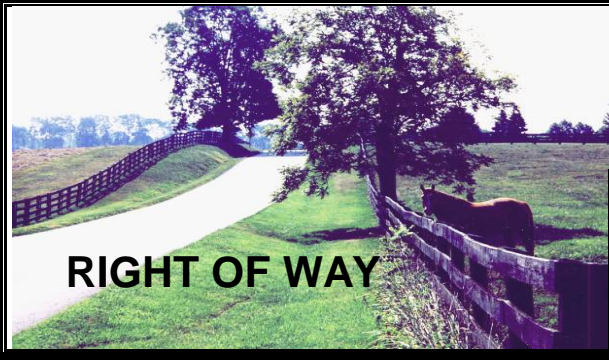
 RIGHT OF WAY	Section PROPOSAL
	Subject Acceptance of Proposal

**ESTABLISHMENT
OF FEES:**

An acceptable fee is established prior to the assignment of a fee appraiser. Such a fee is based on the appraiser's proposal or on a fee the Cabinet accepts following negotiations. Fee proposals are:

- Ø Submitted with the letter of interest
- Ø Evaluated as one of the factors used in arriving at a recommendation to Division of Purchases for the award of the contract

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	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Issuance of Work Order</p>

STEPS IN ISSUING WORK ORDER:

The process for issuing a work order is as follows:

- Ø The Division of Purchases issues a work order/authorization letter upon execution of the contract, which specifies:
 - ◆ Date that work is to begin
 - ◆ Final submission date
- Ø The district right-of-way supervisor or the appraisal manager designates a review appraiser to:
 - ◆ Review each appraisal for general acceptability and format
 - ◆ Conduct instructional meetings during the period of assignment
 - ◆ Recommend the appraiser's invoice for payment

Note: Invoices for payment upon completion are submitted to the district right-of way supervisor.

ACCEPTABLE APPRAISAL:

The district right-of-way supervisor, or designated representative, recommends for approval the invoice for any acceptable appraisal and submits it for payment in a timely manner.

UNACCEPTABLE APPRAISAL:

If an appraisal does not comply with the contract or is considered unacceptable, a percentage of the parcel's contract fee is withheld pending corrective action by the appraiser. The first-level review appraiser:

- Ø Returns any unacceptable appraisal as soon as possible to the appraiser, along with a letter stating the reasons for rejection
- Ø Sends a copy of the letter to:
 - ◆ District right-of-way supervisor or project manager
 - ◆ Second-level review appraiser

Note: The appraiser shall submit corrective requests within 15 business days.




UNACCEPTABLE

APPRAISAL (cont.): Failure by an appraiser to perform the following may result in revocation of the appraiser's prequalified status:

- Ø Furnishing additional documentation determined to be necessary by a review appraiser
- Ø Answering satisfactorily any federal ineligibility notifications

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	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Instructions to Appraisers</p>

**INFORMATION
FOR STAFF & FEE
APPRAISERS:**

Staff and fee appraisers are to obtain and review the following information before proceeding with appraisal assignments:


- Ø Plans, plats, maps, and appraisal forms (when available)
- Ø Title reports (when available)
- Ø Special instructions relating to other interests, encumbrances, leaseholds, etc. (as applicable)
- Ø *Answers to Questions about Right of Way Acquisition* brochures, a copy of which is to be given to each property owner on initial contact (when available).

Note: Brochures are available from the district office.

- Ø TC 62-19E form, *Property Owner Interview* (**Exhibit 07**) (when available)

Note: The appraiser is to explain how the acquisition will affect the property and is to leave the form with the property owner.

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	<i>Chapter</i> APPRAISERS & COURT WITNESSES
	<i>Subject</i> Review Appraisers

QUALIFICATIONS OF A REVIEW APPRAISER:

The selection of a review appraiser is based on:

- Ø Experience
- Ø Training
- Ø Ability to coordinate appraisal functions in a district office

To qualify as a review appraiser, an applicant is to:

- Ø Have graduated from an accredited college or university with a degree as required for a right-of-way agent

Note: Experience in appraising or right-of-way negotiations may be substituted for education on a year-for-year basis.

- Ø Have at least three years of progressively responsible experience in right-of-way appraising, acquisition, and supervision (or an equivalent combination of acceptable experience and training in the field of appraising)
- Ø Be fully conversant with the following pertaining to right-of-way acquisition:
 - ◆ Procedures
 - ◆ Regulations
 - ◆ Laws
- Ø Possess extensive knowledge of:
 - ◆ Appraisal techniques
 - ◆ Factors affecting property values
 - ◆ Currently accepted methods of appraising property

Note: The quality of past appraisal work serves as an example of experience and ability to perform the duties of a review appraiser.

- Ø Have successfully completed instructional courses given by recognized appraisal organizations



**QUALIFICATIONS
OF A REVIEW****APPRAISER: (cont.):**

- Ø Have a working knowledge of Kentucky statutory and case law pertaining to compensability
- Ø Possess the following:
 - ◆ Working knowledge of highway location survey work
 - ◆ Broad knowledge of real estate laws and practices
 - ◆ Ability to understand maps, profiles, and other data connected with highway plans and designs
- Ø Be able to impart/explain information concerning policy changes to staff and fee appraisers and to implement such changes
- Ø Be able to deal effectively and courteously with people

If an applicant meets these qualifications and receives recommendations from a district right-of-way supervisor and the appraisal manager, the Director of the Division of Right of Way and Utilities will designate the applicant a review appraiser.

**FEE REVIEW
APPRAISERS:**

Upon recommendation by the appraisal manager and after prequalification, fee appraisers may be designated by the Director of the Division of Right of Way and Utilities as qualified for appraisal review assignments and may be employed for that purpose. Fee review appraisers operate under the guidelines previously outlined in this section for review appraisers.

**ACTING REVIEW
APPRAISERS:**

When the workload is particularly heavy and a shortage of review appraisers exists, the division may need to appoint acting review appraisers.

Staff appraisers who have demonstrated outstanding performance and ability in the appraisal field but do not have the three years' experience necessary to qualify as review appraisers may be designated acting review appraisers. Under the supervision of Central Office review appraisers, acting review appraisers perform review appraisal functions until they have gained the necessary experience to be designated as review appraisers.

**REVOCATION OF
REVIEW STATUS:**

When a staff review appraiser has not performed appraisal review work for the Cabinet for a period exceeding one year, the staff appraiser's review status is automatically dropped. The following are required for reinstatement to review status:


- Ø Recommendation of the district right-of-way supervisor
- Ø Approval of the appraisal manager and the Director of the Division of Right of Way and Utilities



**SECOND-LEVEL
REVIEW
ASSIGNMENTS:**

Experienced review appraisers may be assigned to perform second-level or final appraisal review on designated projects or selected properties as well as appraisals for condemnation cases. These assignments can be made upon the recommendation of the appraisal manager. Second-level reviewers are responsible for final determination and recommending approval of the amount of compensation to property owners for all appraisals they have reviewed.


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	<p><i>Chapter</i></p> <p>APPRAISERS & COURT WITNESSES</p> <hr/> <p><i>Subject</i></p> <p>Central Office Review Appraisers</p>
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RESPONSIBILITIES: Central Office review appraisers:

- Ø Provide technical supervision of appraisal and appraisal review activities in assigned districts
- Ø Consult, train, instruct, and advise the following regarding methods, approaches, techniques, and documentation to be used in various appraisal problems:
 - ◆ District right-of-way supervisors
 - ◆ Review appraisers
 - ◆ Staff appraisers
 - ◆ Contract appraisers
- Ø Analyze appraisals and necessary documentation for:
 - ◆ Acquisition
 - ◆ Disposal
 - ◆ Court testimony
 - ◆ Rental agreements
- Ø Make final determination and recommend approval of just compensation for all appraisals they review
- Ø Negotiate fees and make assignments for appraisals requested for the purpose of court testimony
- Ø Consult with right-of-way division personnel and the Federal Highway Administration regarding appraisal policies and procedures
- Ø Interpret appraisal policy and procedures and disseminate information to staff and fee appraisers and district reviewers
- Ø Examine files and advise the division director and trial attorneys concerning settlements and trials of pending cases
- Ø Review appraisals prepared for condemnation cases
- Ø Write real estate appraisals, opinions, and recommendations
- Ø Serve as technical advisors on unusual or complex appraisal problems
- Ø Testify when necessary if they have adjusted the fair market value of the appraisal in their review.

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	<p><i>Section</i></p> <p>COURT WITNESSES</p>
	<p><i>Subject</i></p> <p>Staff Appraisal Witnesses</p>

**PREPARATION
FOR COURT
TESTIMONY:**

Every person called as a court witness should prepare as thoroughly as possible. Any staff appraiser is expected to support his or her appraisal by appearing as a court witness when necessary. When notified of a trial date, the district right-of-way supervisor is to arrange sufficient time for the staff appraiser to prepare and appear as a court witness. If the staff appraiser cannot be available for the trial, the right-of-way supervisor should promptly notify the trial attorney and the Director of the Division of Right of Way and Utilities so that a substitute court witness can be obtained or a continuance of the trial sought.

As soon as possible after notification that he or she will be called as a court witness, the staff appraiser should:


- Ø Update his or her original report to the date of taking
- Ø Submit the report sufficiently early to allow for appraisal review well in advance of the trial date

Note: The date of taking is the date of right of entry or the Interlocutory Order Judgment date.

**EXEMPTIONS
FROM COURT
TESTIMONY:**

Review appraisers and Central Office review personnel are exempt from court testimony unless otherwise instructed by the Director of the Division of Right of Way and Utilities. In most instances, this would be an emergency situation involving insufficient time or the inability to obtain another court witness. Occasionally, the director may deem a case so important that the testimony of the review appraiser(s) would be warranted.

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	<p>Section</p> <p>COURT WITNESSES</p>
	<p>Subject</p> <p>Contract Appraisal Witnesses</p>

**PREPARATION
FOR COURT
TESTIMONY:**

Every person called as a court witness should prepare as thoroughly as possible. All fee appraisers are expected, under the terms of their contracts, to support their appraisals in court when necessary.

An appraisal witness, in addition to or instead of the original appraiser, may be provided for by a *Master Agreement for Expert Court Witness*. When necessary, the trial attorney selects an appraiser to inspect condemned properties for purposes of qualification and soliciting a fee proposal.

Fee proposals are forwarded to the Division of Right of Way and Utilities, which estimates and negotiates the fees for preparation of the appraisals. After mutual agreement as to fees, the appraiser is assigned parcels to appraise under an individual *Master Agreement for Expert Court Witness*. The trial attorney may request employment of a second, or possibly third, appraisal witness because of the difficulty or magnitude of the case.


Appraisal reports and invoices are submitted by the date requested in the letter of assignment. All invoices for trial preparation and court time must be approved by the trial attorney and forwarded to the Division of Right of Way and Utilities for payment.

A fee appraiser who has previously appraised a property and is being called for trial testimony should:

- Ø Update his or her original report to the date of taking
- Ø Submit the report to the Central Office sufficiently early to allow for review well in advance of the trial date

Court witness appraisals are to be reviewed and approved prior to use as the basis for court testimony or settlement.

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	<i>Chapter</i> APPRAISALS
	<i>Subject</i> Policy

POLICY:

Appraisal standards are the same throughout the state. A staff or fee appraiser is to appraise all property to be acquired with the exception of those properties acquired using the format of waiver valuation. Owners are to receive an offer that reflects the current fair market value of the taking at the date of take, without the influence of any outside factors.

To ensure the Cabinet meets these objectives, a review appraiser is to review all appraisals for the following and is to recommend just compensation prior to initiation of negotiations:

- Ø Accuracy
- Ø Documentation
- Ø Final value conclusions

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	<p><i>Chapter</i></p> <p>APPRAISALS</p>
	<p><i>Subject</i></p> <p>Appraisal Standards</p>

STATE APPRAISAL BOARD:

Appraisals are to be prepared in accordance with approved State Appraisal Board standards and are to contain all elements considered essential in good appraisal practice and as outlined in 49 CFR 24.103 (**Exhibit 02**). This section includes the following guidelines:

- Ø (a) Standards of appraisal. The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:
 - Ø (1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.
 - Ø (2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
 - Ø (3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.



**STATE APPRAISAL
BOARD (cont.):**

- Ø (4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- Ø (5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
- Ø (6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

**OTHER APPRAISAL
REQUIREMENTS:**

The *Division of Right of Way and Utilities Appraisal Guidelines* offers further interpretation of the division's policies and procedures. All of these requirements are intended to be consistent with the *Uniform Standards of Professional Appraisal Practice* (USPAP) promulgated by the Appraisal Foundation (www.appraisalfoundation.org/s_appraisal/index.asp). With the exception of waiver valuations, an appraiser prepares before- and after-value appraisals on all partial acquisitions. When estimating before- and after-values, the appraiser considers:

- Ø Cost
- Ø Sales comparison
- Ø Income approaches to value

The appraiser:

- Ø Uses only those approaches applicable in each appraisal situation
- Ø Explains why any unused approach is not applicable

Upon completion of an appraisal, the appraiser submits it to a review appraiser, who forwards the original approved appraisal to the Division of Right of Way and Utilities for permanent filing. A copy is sent back to the district with the approved review for the appropriate offer and payment to proceed.

**CONFLICT OF
INTEREST:**

Appraisers shall have no direct or indirect personal or contemplated future personal interest in property to be appraised. Employment of or compensation to appraisers is not contingent upon values derived for property to be appraised, and appraisers are to write their reports in conformance with all state and federal laws, regulations, and policy. Appraisers and review appraisers affirm adherence to this policy by signing a certification to that effect on each appraisal report.

An appraiser or review appraiser making an appraisal or appraisal review may be authorized by the Kentucky Transportation Cabinet (KYTC) to act as negotiator for real property only if the offer to acquire the property is \$10,000 or less.



APPRAISER

INDEPENDENCE: No person shall attempt to unduly influence or coerce an appraiser or a review appraiser regarding any valuation or other aspect of an appraisal or appraisal review. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except under certain conditions outlined in 49 CFR, Part 24.102(n)(2).

PROJECT

INFLUENCE: The appraiser shall disregard any decrease or increase in the market value of the real property caused by the:

- Ø Project for which the property is to be acquired
- Ø Likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner

DAMAGES: Even though the value of a property may be reduced in the open market, damages that are considered noncompensable under state law are not to be reflected in the after value.

ENHANCEMENTS: When there is an increase in value to a property (enhancement) caused by special benefits, the after value must reflect the effect of those benefits. In accordance with state law, enhancements that occur shall be offset against the value of the part acquired and the damages to the remainder.

UNECONOMIC

REMNANTS: The first-level review appraiser is to determine whether a remainder is an uneconomic remnant and so state in the review.

**CONTAMINATED
PROPERTIES:**

Properties known or suspected to be contaminated are appraised as though clean, although a note should be made in the appraisal of the suspected contamination. The decision to modify the offer of just compensation may be made as an administrative measure at a later date.

SURPLUS

PROPERTY: If surplus property is to be sold to an adjoining owner, its value is found both as a separate entity and as it would contribute value to the adjacent property. The final value estimate is the higher of the two values. If the property is to be sold publicly, the appraisal is made to find only the property's value as a separate entity.

If preliminary investigation reveals that both entity and contributing values will obviously be less than \$1,500, the report of value may be submitted in memorandum form, briefly outlining the facts and supportive data that have led to the conclusion of value. See the *Division of Right of Way and Utilities Appraisal Guidelines*



WASTE AREAS: When the Division of Highway Design determines that the Department of Highways is to provide waste areas, the division is to request the Division of Right of Way and Utilities to prepare comparative cost estimates for acquiring the areas in fee simple and temporary easements. This procedure is outlined in the *Highway Design Guidance Manual*.

When the Cabinet has made the final determination as to the title desired, the Division of Right of Way and Utilities appraises the property accordingly, either as a fee acquisition or as a temporary easement. The waste areas are to be valued at full fair market value for fee acquisitions and accordingly for temporary acquisitions. The appraisal should identify all the trade-off amenities that are to be included as part of the acquisition. A waste site:

- Ø May not be acquired or appraised until an environmental review has been completed
- Ø May not cause the displacement of families or individuals without Central Office approval
- Ø Acquired in fee and subsequently not incorporated into the project or used for project mitigation is to be disposed of at fair market value unless it is:
 - ◆ Used for other public or environmental applications
 - ◆ Approved by the Federal Highway Administration (FHWA)

ACCESS POINTS: Appraisals are to be completed as before- and after-value reports. The before value reflects the value of the property as it exists on the date of appraisal. The after value reflects:

- Ø The value of the property with the proposed access rights
- Ø Any changes in highest and best use for the parcel or area

Note: The difference in these two figures, if any, represents the property's change in value as a result of the granting of access.

**AIRSPACE
LEASES:**

Appraisals for the valuation of airspace leases are to reflect the contribution of the leased airspace to the parent tract. Typically, an appraiser will find the fair market (contributory) value of the tract sought to be leased. Once approved, that value is sent to the Permits Branch, Division of Maintenance for review. When reliable data is available, comparable rents or other methods may be used to derive rental value. The Director of Right of Way and Utilities and the FHWA must approve any waivers of payments.

**TRANSPORTATION
ENHANCEMENTS:**

When real estate is acquired in fee for transportation enhancements under the TEA-21 regulation, a prequalified appraiser shall prepare an appraisal according to the appraisal standards above. The Central Office is to review this appraisal. If the appraisal is over \$100,000, it is to be forwarded to the FHWA Right of Way Office for review.



**TRANSPORTATION
ENHANCEMENTS****(cont.):**

These acquisitions must demonstrate a clear transportation connection. As these properties are acquired with federal transportation dollars, they may not be transferred to other state proprietary agencies without federal approval or agreement.

Appraisals prepared for the Office of Transportation Enhancement Programs are prepared and reviewed to the same standards and requirements as those appraisals prepared for right-of-way acquisition. If a fee appraiser prepares the appraisal, he or she must be on the KYTC's prequalified list. These reports are reviewed at both first and second levels. If the appraisal is over \$100,000, a copy is to be forwarded to FHWA Right of Way Office for review.

**NUMBER OF
APPRAISALS:**

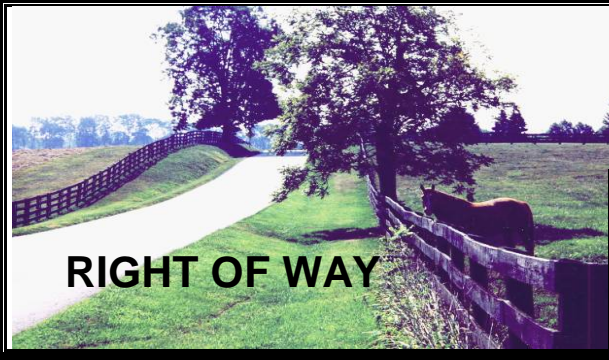
At least one appraisal is required on any parcel that is not designated a minor acquisition review. A second appraisal may be made if the review appraiser requests one due to unusual circumstances or complexities.

When unusual circumstances or complexities warrant, the appraisal manager may request a third appraisal after the files have been documented to show the need.

Two additional appraisals may be obtained when litigation is imminent or deemed necessary by the Cabinet. Also, additional appraisals may be obtained when requested by the FHWA.

All appraisals must conform to one another in terms of scope and date of valuation. Any changes in the highest and best use caused by the project are not to be considered.

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	<p><i>Chapter</i></p> <p>APPRAISALS</p>
	<p><i>Subject</i></p> <p>Data Assemblage & Analysis</p>

OVERVIEW:

The appraiser is to make a preliminary inspection of the project and plans to ascertain the amount and type of data to gather, analyze, and assemble to properly arrive at and document the appraisal conclusions. The inspection is to include:

- Ø Type and general characteristics of the neighborhood(s) involved
- Ø Type and general characteristics of properties the project directly affects
- Ø Any unusual problems or circumstances that require particular attention, assistance, or documentation

**MARKET DATA
ASSEMBLAGE:**

Before beginning the appraisal of each individual property affected, the appraiser gathers and analyzes available market data including:

- Ø Sales of properties similar to those being appraised
- Ø Rental information
- Ø Current building and construction costs
- Ø Any other factors that may affect the value of properties to be appraised

Each staff or fee appraiser makes an independent analysis and judgment of this information in formulating the comparable sales and appraisal reports. The sales report may be separate from each appraisal but becomes a part of each appraisal by reference.

**COMPARABLE
SALES REPORT:**

The sales report is one of the most essential components of any appraisal assignment because it is the basis from which the appraiser will exercise judgment and support for conclusions of value. The final sales report is to be submitted as part of the project file. At a minimum, the sales report is to consist of the following:

- Ø **Letter of Transmittal and Appraiser Certification Form**—A letter transmitting the sales and appraisal reports and a signed TC 62-22 form, *Appraiser's Certification of Comparable Sales Data (Exhibit 08)*, stating that the appraiser has inspected and verified each comparable sale



**COMPARABLE
SALES REPORT
(cont.):**

Ø **Area or Neighborhood Analysis**—An analysis and description of economic and other factors relevant to market value in the community affected by the project

Ø **Project Analysis**

- ◆ Brief description of the project and its location
- ◆ Portion of the community most affected
- ◆ Anticipated effects (grade changes, access changes, etc.) to the types of properties involved

Ø **Other Analyses (if applicable)**—Analyses of location, topography, time, financing, etc.


Ø **Comparable Sale Data Form**—The appropriate form listing the data from the analysis of each sale used in the appraisal assignment:

- ◆ Either the TC 62-20B form, *Comparable Sale Data—Residential/Commercial/Industrial (Exhibit 09)*, or the TC 62-20C form, *Comparable Sale Data—Rural (Exhibit 10)*
- ◆ TC 62-20D form, *Additional Comparable Sale Data (Exhibit 11)*, to which properly identified photographs of each sale are attached

Ø **Market Data Map**—A city or topographic map, as applicable, on which each sale is numbered and properly spotted to aid in reviewing the appraiser's work

Note: The project area should be spotted on the map as well.

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	Chapter APPRAISALS
	Subject Inspection of Property

OVERVIEW: The appraiser is to make a detailed inspection personally of the property being appraised. Buildings taken or damaged are to be measured and necessary photographs taken in compliance with instructions furnished to the appraiser.

**INITIAL CONTACT
WITH PROPERTY
OWNER:**

Pursuant to Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (**Exhibit 05**), when the appraiser makes initial contact with a property owner (or his or her designated representative), the owner (or his or her representative) is given the opportunity to accompany the appraiser during inspection of the property. To certify this has been done, the appraiser signs the certificate of appraiser on the first page of the TC 62-20.1 form, *Appraisal Report (Exhibit 12)*.

On initial contact, the appraiser is to:

- Ø Explain how the acquisition will affect the property
- Ø Give the owner a copy of the Department of Highways' informational brochure *Answers to Questions About Right of Way Acquisition*

Note: Brochures are available from the district office.

- Ø Provide the owner a copy of the TC 62-19E form, *Property Owner Interview (Exhibit 07)*, and a postage-paid return envelope, with the request that the completed form be returned to the Division of Right of Way and Utilities
- Ø Inquire as to any recent improvements or amenities that may affect the value of the property

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	Chapter APPRAISALS
	Subject Documentation

DEFINITION OF

DOCUMENTATION: *Documentation* is defined as the provision of facts or evidence to substantiate a methodical discussion of principles involved and conclusions reached for fair market value. It is, therefore necessary that an appraiser provide facts and other evidence affecting market value to substantiate or support each appraisal. The extent of facts and other evidence necessary depends on the type and complexity of the appraisal problem involved.

In addition to gathering, analyzing, and assembling data for the comparable sales report, the appraiser is to support, explain, or document to the review appraiser each applicable approach to value.

PROPERTY & BUILDING SKETCHES:

Sketches are an important part of all appraisals. These visual depictions, which may include sketches of parcel taking and remainders, along with the narrative descriptions, allow the appraiser more flexibility in discussing appraisal problems by simple reference to the drawings.

PHOTOGRAPHS: Properly identified photographs are required on all appraisals even if no improvements are acquired. The appraiser is to:

- Ø Note on the property sketch the location from which he or she takes each picture
- Ø Take pictures from vantage points that provide the sharpest possible details of the subjects being photographed
- Ø Date and sufficiently identify the photographs to allow the reader to determine what the photographs

PERSONAL PROPERTY:

An appraisal report shall include an adequate description of the physical characteristics of the property being appraised, including items of personalty that have to be appraised with the real estate. The relocation agents will inventory personal property not paid for in the appraisal.



**SALES
COMPARISON
APPROACH:**

The appraiser is to:

- Ø Make direct comparisons between the property being appraised and comparable properties sold
- Ø Adjust differences in the properties by dollar or percentage amounts

Careful independent considerations are to be used in analyzing and adjusting comparable sales used. In addition to stating the reason for the adjustment, the appraiser is to explain why he or she uses a particular dollar or percentage amount.

The appraiser may save considerable time by making reference in the appraisal to common adjustments that are documented in the comparable sales report such as:

- Ø Time
- Ø Location
- Ø Topography

**COST
APPROACH:**

The appraiser is to support cost figures by the use of cost indices or actual construction costs. Appraisals are to contain the specific source of cost data, its date of issue, and the section and page numbers to which the reference is made. The appraiser may also personally analyze the following for use in the cost approach:

- Ø Prevailing local costs
- Ø Contractor's estimates

When using a national cost service, the appraiser is to use all applicable modifiers according to instructions provided for the manual's use. If it becomes necessary to deviate from the manual's base unit cost, the appraiser is to provide adequate explanation for such reasoning.

The appraiser is to classify the buildings carefully so that he or she uses the proper unit cost. The appraiser is to sufficiently explain depreciation—physical, functional, or external. The appraiser may use the depreciation tables in the cost manual, along with the narrative explanation provided, to support the depreciation he or she estimates.

**INCOME
APPROACH:**

The appraiser is to establish the economic rent of the property in question by referring to other properties whose income streams exhibit similar characteristics in terms of:

- Ø Quality
- Ø Quantity
- Ø Durability



**INCOME
APPROACH
(cont.):**

The appraiser is to explain or document items such as:

- Ø Vacancy and credit losses
- Ø Expenses
- Ø Interest rates
- Ø Discount rates
- Ø Internal rates of return
- Ø Capitalization rates

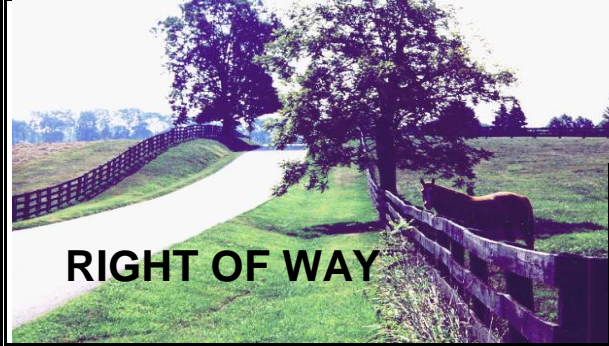
**BEFORE- &
AFTER-VALUE
ESTIMATES:**

Adequate documentation is required to support both before- and after-value estimates. The appraiser is to use each applicable approach to value. If the appraiser does not use an approach, he or she is to explain why it is not applicable.

It may be difficult to find desired market data for partial acquisitions involving possible damage or enhancements. However, one or more of the following methods based on available data shall support the after-value estimate:

- Ø Sales, comparable to the remainder
- Ø Sales of comparable properties from which there have been similar acquisitions for like usage
- Ø Development of the income approach on properties that show economic losses or gains as a result of similar acquisitions for like usage
- Ø Indications from severance damage studies as related to similar acquisitions

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	Chapter APPRAISALS
	Subject Appraisal Reports

TYPES OF APPRAISAL REPORTS:

An appraisal report is to contain all elements considered essential in good appraisal practice as outlined in:

- Ø *Uniform Standards of Professional Appraisal Practice* (www.appraisalfoundation.org/s_appraisal/index.asp)
- Ø 49 CFR, Part 24 (**Exhibit 02**)
- Ø Other instructional data that the Cabinet provides an appraiser

The appraiser is to prepare one of the following reports:

- Ø **TC 62-20.1 Form, Appraisal Report (Exhibit 12)**—The appraiser is to use this form on all acquisitions with major complexity such as:
 - ◆ Partial acquisitions with severance damage
 - ◆ Proximity damage
 - ◆ Other factors of value or damage where two or more approaches to value are required
- Ø **Narrative Appraisal Report**—The appraiser is to use narrative appraisal reports for appraisals of unusual or uniquely complex properties. These reports are also to contain other instructional data that the Cabinet may furnish the appraiser.

Either type of appraisal report is to show:

- Ø Valuation date
- Ø Signature and certification of the person making the appraisal
- Ø Date the report was signed

A fee appraiser's employees may assist in the appraisal process, but the appraiser under assignment is to certify that he or she developed the value conclusion by using his or her independent judgment.

Upon completing an appraisal, the appraiser submits it to a review appraiser.

VALUATION WAVERS:

Although not an appraisal by definition, these property valuations are held to the same policy standards throughout the Commonwealth of Kentucky. They are performed by unbiased persons within the Division of Right of Way and Utilities.

	Section FIRST-LEVEL APPRAISAL REVIEW
	Subject Criteria

OVERVIEW: A qualified review appraiser reviews all appraisals to determine their acceptability as to:

- Ø Procedure
- Ø Form
- Ø Documentation

Therefore, the review appraiser, like the appraiser, is to be:

- Ø Familiar with the project and plans
- Ø Knowledgeable of economic and general market conditions in the project area

The review procedure remains the same in all districts, and the appraisal review process is to meet the requirements outlined in 49 CFR, Part 24 (**Exhibit 02**).

With prior approval from the Director of the Division of Right of Way and Utilities or from the appraisal manager, a second-level review appraiser may perform a one-stage appraisal review. In such case, the two review appraiser functions are combined.

UNECONOMIC REMNANTS:

On all projects, the first-level review appraiser is to determine and state in the review as to whether a remainder is an uneconomic remnant or a buildable remainder.

SALVAGE VALUE:

The district property management agent is to determine the salvage value of improvements and is to furnish this information to the first-level review appraiser for inclusion on the TC 62-87 form, *Appraisal Review* (**Exhibit 13**).

COURT-TESTIMONY APPRAISALS:

A first-level review is not required on court-testimony appraisals. Any appraisal ordered for condemnation proceedings is to be treated the same as all other appraisals explained in this guidance manual.

SURPLUS-PROPERTY APPRAISALS:

A review appraiser reviews appraisals for disposal of surplus property for acceptability as with any other appraisal report, keeping in mind the purposes of the reports and the values being estimated as described in **Chapter 602**, "Appraisal Standards," of this manual.



ACCESS-POINT**APPRAISALS:**

A review appraiser reviews these appraisals for acceptability as with any other appraisal report, keeping in mind the purposes of the reports and the values being estimated as described in **Chapter 602**, "Appraisal Standards," of this manual.

AIRSPACE-**LEASE****APPRAISALS:**

A review appraiser reviews these appraisals for acceptability as with any other appraisal report, keeping in mind the purposes of the reports and the values being sought as described in **Chapter 602**, "Appraisal Standards," in this manual.

TRANSPORTATION-**ENHANCEMENT****APPRAISALS:**

A review appraiser reviews these appraisals for acceptability as with any other appraisal report, keeping in mind the purposes of the reports and the values being sought as described in **Chapter 602**, "Appraisal Standards," of this manual.

PROPERTY-**OWNER****APPRAISALS:**

A review appraiser reviews appraisals obtained by property owners and submitted for review by the Cabinet for acceptability as with any other appraisal report obtained for Cabinet acquisition purposes. Procedurally, they are treated as dual appraisal reports in conjunction with the report obtained by the Cabinet. They are to have the same scope of work and time frame as well as follow department requirements.

BUILDABLE**LOTS:**

For purposes of computing a replacement housing payment, the relocation evaluator may ask the first-level review appraiser to determine whether a remainder is a buildable lot. Such determination may ultimately be furnished by memorandum from the first-level review appraiser or the appraiser.

Note: A copy of this memo should be placed in the parcel file.

CARVE OUTS:

When a carve out is necessary, the first-level review appraiser will be asked to furnish values based on the carve out identified by the relocation evaluator when any or all of the following occur:

- Ø Appraisal does not give this information
- Ø Relocation evaluator's determination of a typical home site differs from the appraisal
- Ø Carve out is needed for replacement property being purchased by a displacee
- Ø Carve-out values may ultimately be furnished by memorandum from the first-level review appraiser or appraiser.

	Section FIRST-LEVEL APPRAISAL REVIEW
	Subject Procedures

STAGES OF FIRST-LEVEL REVIEW:

A first-level appraisal review is accomplished in two stages. The first stage is a desk review of the appraisals and comparable sales report to determine their acceptability as to procedure and form. The comparable sales report is checked to verify that its analyses support adjustments and statements in the appraisals.

The second stage consists of detailed on-site inspections of all properties—those being appraised and those identified in the comparable sales report—to determine whether the appraiser has included all items affecting the values of the properties.

APPRAISAL ACCEPTABLE:

If only one appraisal is required and the reviewer finds the appraisal to be properly completed and documented and the appraiser's conclusion of value sound, the reviewer is to:

- Ø Approve the appraisal by signing the TC 62-87 form, *Appraisal Review (Exhibit 13)*
- Ø Attach the TC 62-87 form to the appraisal

DIFFERENT CONCLUSIONS:

If a review of the appraisal and supporting data indicates a different conclusion from that of the appraiser's, the reviewer is to thoroughly document and explain his or her conclusion on the *Appraisal Review* or in an attached narrative. If the reviewer disagrees with the appraiser's value conclusions, the reviewer is to provide support for his or her opinion.

Note: A reviewer should never replace a documented opinion with an unsupported or undocumented opinion.

MINOR ERRORS:

If the reviewer finds minor mathematical errors that do not affect the final value conclusion or discovers the omission of certain factual data, the reviewer may make corrections after documenting and explaining the changes on the *Appraisal Review* or in an attached narrative.



APPRAISAL

UNACCEPTABLE: If an appraisal requires substantial corrections or revisions, it is returned to the appraiser for correction and the following policies are observed:

- Ø All copies of appraisals submitted by the appraiser are to be returned for correction.
- Ø Appraisals returned with a transmittal letter detailing the items are to accompany correction (both fee and staff) in question.
- Ø The reviewer is to make a copy of the complete appraisal before returning it to the appraiser.
- Ø The reviewer's copy is to be stamped RETURNED FOR CORRECTION.

Note: A stamp, provided for this purpose, includes a place for the reviewer's initials and the date the appraisal is returned.

- Ø The reviewer is to send a copy of the transmittal letter to the:
 - ◆ Appraisal manager
 - ◆ Appropriate second-level reviewer
- Ø The reviewer is to retain the following in the parcel file as a permanent record copy of the appraisal:
 - ◆ Copied returned appraisal
 - ◆ Copy of the corrected appraisal
 - ◆ Copies of all relative correspondence

**DUAL
APPRAISALS
REQUIRED:**

The review appraiser is to determine the acceptability of each of the following as to procedure, standards, and methods outlined in instructions provided to the appraisers when:

- Ø Two appraisals have been made on one parcel
- Ø Property owner has submitted a report for review

If one appraisal is unacceptable, it must be returned for correction before final review of that parcel. If both appraisals are acceptable, the reviewer is to determine which appraisal:

- Ø Presents the better documentation
- Ø Reflects more reasonably the compensation to be paid

In the review of dual appraisal reports, the review appraiser is to review and complete a review for each. The reviewer is to select one of the reports as the basis for compensation. There is not to be a reconciliation of the two reports into a third-value estimate based on parts taken from the two reports.

The review of the recommended report is to:

- Ø Note that it has been selected as representative of fair market value
- Ø State at the end the amount of compensation
- Ø Make no mention of the other report

Note: The review appraiser's recap sheet is to accompany only this review.



**DUAL
APPRAISALS
REQUIRED (cont.):**

The review of the report that is not recommended is to:

- Ø Discuss the reasons why it is not recommended
- Ø Note the superiority of the other report

The review sheet on this report is not to:

- Ø Carry a recap sheet
- Ø Include a recommended value

The summary sheet covering the two reports is to carry only the recommended value.

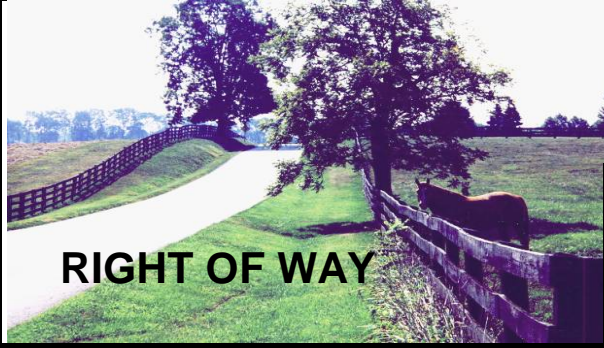
**SUBMISSION TO
CENTRAL
OFFICE:**

After thorough reviews by the review appraiser, appraisals are submitted to the Central Office as follows:

- Ø TC 62-20.1 form, *Appraisal Report* (**Exhibit 12**)
- Ø TC 62-87 form, *Appraisal Review* (**Exhibit 13**)—attached to the *Appraisal Report*
- Ø Comparable Sales Book from each appraiser assigned
- Ø Appraisal summary

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	<p><i>Chapter</i></p> <p>APPRAISALS</p>
	<p><i>Subject</i></p> <p>Second-Level Appraisal Review Criteria & Procedures</p>

OVERVIEW: A second-level appraisal review typically consists of a desk review. It often, however, includes an on-site inspection of extremely complex appraisals including:

- Ø High-value parcels
- Ø Enhancements
- Ø Special use properties

If the appraisal and the first-level review appraiser's approval or recommendation are found acceptable, the second-level reviewer approves the appraisal and its summary and then forwards the appraisal summary to the Director of the Division of Right of Way and Utilities, or designated representative, for approval. At this time, the Central Office forwards copies of the approved appraisal summary to the district. This signed and approved appraisal summary becomes the authority to make the offer of just compensation identified on the summary.

Negotiations may begin immediately upon approval of an appraisal summary by the first-level review appraiser and the Director of the Division of Right of Way and Utilities if either of these conditions exists:

- Ø Acquisition is partial, and compensation is \$25,000 or less
- Ø Acquisition is total, and compensation is \$50,000 or less

On any other parcel requiring an appraisal, negotiations are to begin after a second-level review appraiser has reviewed the appraisal and the Director of the Division of Right of Way and Utilities, or designated representative, has approved it.

The Director or Appraisal Manager of the Division of Right of Way and Utilities may allow variations to the foregoing policy if he or she considers them to be in the best interest of the Cabinet. Under no circumstances are variations to be allowed that will be less than the minimum requirements outlined in 49 CFR, Part 24 (**Exhibit 02**).

**PROPERTY-
OWNER
APPRAISALS:**

Independent appraisals prepared for and submitted by property owners are to be reviewed under the same guidelines relative to:

- Ø Quantity, quality, and reliability of data
- Ø Proper appraisal procedure for eminent domain



**PROPERTY-
OWNER
APPRAISALS
(cont.):**

Should the report contain substantive evidence that would alter the original value conclusion, such evidence may be used to support a revision of the original value. Procedurally, property owner appraisal reports are reviewed under the same policy as that for reviewing dual appraisal reports (see **Chapter ROW-607-2**, "Procedures").

**SURPLUS-
PROPERTY
APPRAISALS:**

As with any other appraisal report, both first-level and second-level review appraisers review appraisals for disposal of surplus property for acceptability, keeping in mind the purposes of the reports and the values being estimated.

**ACCESS-POINT
APPRAISALS:**

As with any other appraisal report, both first-level and second-level review appraisers review access point appraisals for acceptability, keeping in mind the purposes of the reports and the values being estimated.

**AIRSPACE-
LEASE
APPRAISALS:**

As with any other appraisal report, both first-level and second-level review appraisers review airspace lease appraisals for acceptability, keeping in mind the purposes of the reports and the values being estimated.

**COURT-
TESTIMONY
APPRAISALS:**


The second-level review appraiser reviews court testimony appraisals to determine whether they meet minimum requirements of the Federal Highway Administration and Kentucky Transportation Cabinet Department of Highways.

Once a review is complete, it is signed by the:

- Ø Second-level review appraiser, who sets forth the strengths and weaknesses in a report
- Ø Director of the Division of Right of Way and Utilities, or designated representative, who approves or disapproves the report's use as a basis for court testimony

The Central Office then forwards copies of the review to the trial attorney handling the case.

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	<i>Chapter</i> ACQUISITIONS
	<i>Subject</i> Policy

POLICY:

Right of way is acquired through negotiations based on just compensation and approved right-of-way plans. Right-of-way acquisition and related relocation assistance activities shall be in accordance with 49 CFR Part 24 (**Exhibit 02**) and 23 CFR Part 710 (**Exhibit 01**) if federal funding is involved with any phase of the project.

(a) Expeditious acquisition. The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation

(b) Notice to owner. As soon as feasible, the Agency shall **notify the owner in writing** of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. See Sec. 24.203.

(c) Appraisal, waiver thereof, and invitation to owner.

(1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in Sec. 24.102

(2) An appraisal is not required if:

(i) The owner is donating the property and releases the Agency from its obligation to appraise the property; or

(ii) The Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data.

(A) When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation.

(B) The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.



POLICY (cont.):

(C) The Federal Agency funding the project may approve exceeding the \$10,000 threshold, up to a maximum of \$25,000, if the Agency acquiring the real property offers the property owner the option of having the Agency appraise the property. If the property owner elects to have the Agency appraise the property, the Agency shall obtain an appraisal and not use procedures described in this paragraph. See Appendix A, Sec. 24.102©(2).

(d) Establishment and offer of just compensation. Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. An Agency official must establish the amount believed to be just compensation. (See Sec. 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. See Appendix A, Sec. 24.102(d).

(e) Summary statement. Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

- (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
- (2) A description and location identification of the real property and the interest in the real property to be acquired.
- (3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are **included as** part of the offer of just compensation. Where appropriate, the statement shall identify any **other** separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by this offer.

(f) Basic negotiation procedures. The Agency shall make **all** reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with Sec. 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation. See Appendix A, Sec. 24.102(f).



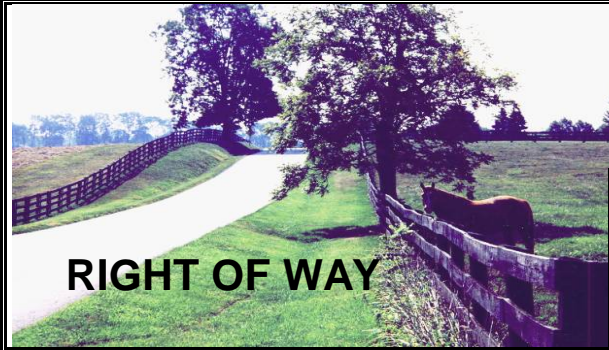
- POLICY (cont.):**
- (g) Updating offer of just compensation.** If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.
 - (h) Coercive action.** The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.
 - (i) Administrative settlement.** The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states **what** available information, **including trial risks**, supports such a settlement. See Appendix A, Sec. 24.102(i).
 - (j) Payment before taking possession.** Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner. See Appendix A, Sec. 24.102(j).
 - (k) Uneconomic remnant.** If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. See Sec. 24.2(a)(27).
 - (l) Inverse condemnation.** If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.
 - (m) Fair rental.** If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term, or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy. See appendix A, Sec. 24.102(m).



POLICY (cont.):**(n) Conflict of interest.**

- (1) The appraiser, review appraiser or person performing the waiver valuation shall not have any interest, direct or indirect, in the real property being valued for the Agency. Compensation for making an appraisal or waiver valuation shall not be based on the amount of the valuation estimate.
- (2) No person shall attempt to unduly influence or coerce an appraiser, review appraiser, or waiver valuation preparer regarding any valuation or other aspect of an appraisal, review or waiver valuation. Persons functioning as negotiators may not supervise or formally evaluate the performance of any appraiser or review appraiser performing appraisal or appraisal review work, except that, for a program or project receiving Federal financial assistance, the Federal funding Agency may waive this requirement if it determines it would create a hardship for the Agency.
- (3) An appraiser, review appraiser, or waiver valuation preparer making an appraisal, appraisal review or waiver valuation may be authorized by the Agency to act as a negotiator for real property for which that person has made an appraisal, appraisal review or waiver valuation only if the offer to acquire the property is \$10,000, or less. See appendix A, Sec. 24.102(n).

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	<p><i>Chapter</i></p> <p>ACQUISITIONS</p>
	<p><i>Subject</i></p> <p>Initiating Negotiations</p>

POLICY: The district may initiate negotiations:

- Ø After a right-of-way has been authorized
- Ø Upon Central Office approval of the appraisal summary when an appraisal has been prepared

The district may initiate negotiations for parcels involving minor and noncomplex acquisitions immediately upon the district right-of-way supervisor's approval of a minor acquisition review. The district may begin calculating minor acquisition review values upon notification from the director that right-of-way activities have been authorized.

The Director of the Division of Right of Way and Utilities or the Appraisal Branch Manager may allow variations to the foregoing policy if they are considered to be in the best interest of the Cabinet. Under no circumstances are variations to be allowed that will be less than minimum requirements outlined in 49 CFR, Part 24 (**Exhibit 02**).

All parcel acquisition assignments are to be completed through the Division of Right of Way and Utilities' computer-generated program (RWU) if available for subject project.

**MINOR
ACQUISITION
REVIEW:**

The division encourages the districts to use the minor acquisition review (MAR) valuation and acquisition process. Effective use of the MAR process will reduce the workloads of appraisers and review appraisers and advance the acquisition process. It is essential that the district identify and acquire parcels covered by this process early in the right-of-way phase.

Note: If a property owner objects to the MAR value, an appraisal must be completed.

The district is to use the MAR process to acquire parcels that fall into one of the following categories:

- Ø Minor complexity acquisitions (noncomplex acquisitions from a parent parcel) having a value no greater than \$10,000
- Ø Total acquisitions having a value no greater than \$10,000



**MINOR
ACQUISITION
REVIEW (cont.):**

Steps the district is to follow when implementing this process are as follows:

1. Identify early in the right-of-way phase the parcels that are covered by this process.
2. Determine the highest and best use of these parcels.
3. Search market data to determine a value range for each use.
4. Perform calculations for each parcel acquisition that:
 - Ø Identifies the size of the tract before and after the acquisition
 - Ø Describes the type of property
 - Ø Describes what is being acquired and what remains
 - Ø Explains how the acquisition impacts the property
5. Present offer in writing to property owner.
6. Complete negotiations within 30 days.
7. Promptly process parcel batches.

Note: Parcel batch refers to the completed parcel file documentation.

While an appraiser or reviewer may provide market data, the involvement of either is discouraged. Any acquisition agent knowledgeable of the following can accomplish this process:

- Ø Real estate practices
- Ø Acquisition policies

The value ranges are to be approved by the district right-of-way supervisor, and the acquisition agent is encouraged to complete calculations.

After the acquisition agent inspects the property and gives the owner a visual and verbal description of the acquisition and any remaining property, the written offer is made. The acquisition agent is to:

- Ø Explain that the valuation problem is uncomplicated and that the offer was computed by using values from local market data (the agent's TC 62-77 form, *Record of Contacts (Exhibit 15)*, in each parcel file is to show the offer calculation)
- Ø Prepare a format that shows at least three individual sales that were used to develop the value ranges for the specific parcel
- Ø Finalize negotiations with the property owner within a reasonable time
- Ø Submit the parcel for suit as with any other acquisition if a settlement cannot be reached

**CONSULTANT
USE OF MINOR
ACQUISITION
REVIEW:**


A right-of-way acquisition consultant is to follow the same procedures above, with the following exception:



**CONSULTANT
USE OF MINOR
ACQUISITION
REVIEW (cont.):**

A Federal Highway Administration regulation requires that the acquiring agency determine just compensation. Prior to the offer, the district right-of-way supervisor is to approve both the value ranges for the project and each parcel's calculation. The acquisition agent is to include a copy of each in the completed parcel batch.

2 2 2

	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Overview</p>

DEFINITION: Administrative settlements occur when the Director of the Division of Right of Way and Utilities, the Acquisitions Branch Manager, and the district right-of-way supervisors acquire a parcel above the appraised fair market value.

GENERAL GUIDELINES: Administrative settlements require varying levels of approval dictated by the amount of increase above the approved offer to purchase. Settlements are not to be made until the appropriate approval has been obtained.

Examples of circumstances where an administrative settlement may be used to complete the acquisition include:

- Ø Omission of a minor item from the appraisal that alters just compensation by a negligible amount
- Ø Property owner's submission of a counteroffer not substantially different from the offer of just compensation
- Ø Compensation for issues that cannot be included in an appraisal

A record of all administrative settlements and justifications is required in the parcel file and in the Division of Right of Way and Utilities computer system (RWU).

2 2 2


	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Acquisitions from State Employees</p>

**ACQUISITIONS
FROM STATE
EMPLOYEES:**

If the Cabinet acquires property from a state employee and bases the settlement on an increase in compensation above the approved appraisal, the district right-of-way supervisor is to justify the increase in writing. Regardless of the amount of the increase, the supervisor is to:

- Ø Write a detailed recommendation for the administrative settlement
- Ø Submit the recommendation for approval to the:
 - ◆ Director of the Division of Right of Way and Utilities
 - ◆ Acquisition Branch Manager

2 2 2

	<p><i>Section</i></p> <p>ADMINISTRATIVE SETTLEMENTS</p>
	<p><i>Subject</i></p> <p>Minor Deviation</p>

**MINOR
DEVIATION:**

With prior approval from the district right-of-way supervisor, the negotiator may complete an acquisition without Central Office approval in the following circumstances:

- Ø **Offer Based on an Appraisal**—If \$1,000 or less, the deviation is to be explained in the TC 62-77 form, *Record of Contacts (Exhibit 15)*. If the deviation exceeds \$1,000 but is \$2,500 or less, the district right-of-way supervisor is to supplement the parcel file with a memorandum showing:


- ◆ Description of the parcel negotiations
- ◆ Justification for the settlement

This memorandum is to accompany the request for payment to the Central Office.

- Ø **Offer Based on a Minor Acquisition Review**—The same justification requirements apply to minor acquisition reviews that apply to offers based on an appraisal up to a total settlement of \$10,000. Total settlements exceeding \$10,000, regardless of the amount of increase, are considered to be substantial deviations of fair market value and are to include a full recommendation for settlement for Central Office approval.

Note: On a parcel involving an owner-occupied property with relocation assistance, written notification is to be provided to the Relocation Branch Manager. The notification is to explain the amount of increase and the justification for such an increase so that a determination can be made as to its effect on the replacement-housing computation. Also, the property owner is to be advised of the changes to the property value and the way these changes affect the replacement-housing supplement.

2 2 2

	Section ADMINISTRATIVE SETTLEMENTS
	Subject Substantial Deviation

**SUBSTANTIAL
DEVIATION:**

An administrative settlement may be made to acquire a parcel at an amount that varies substantially from the approved appraisal if the settlement is:

- Ø Prudent and reasonable
- Ø In the interest of the public

Kentucky Transportation Cabinet (KYTC) employees, sub-agents of the KYTC, and local public agents are to all follow this process.

Note: Substantial variations above the fair market value on mega-projects and interstate projects require Federal Highway Administration approval.

The district right-of-way supervisor's recommendation for settlement is to:

- Ø Document in detail the reasons for the proposed settlement
- Ø Provide spaces for approval by the:
 - ◆ Acquisition Branch Manager
 - ◆ Director of the Division of Right Way and Utilities

If necessary, two branch managers (one of whom acts for the director) may approve the recommendation. In some circumstances, the district right-of-way supervisor may obtain verbal approval, but it is to be confirmed in writing immediately.

DOCUMENTATION: The written request is to be documented in the following manner:

- Ø Description of property before acquisition
 - ◆ Location and current use of property
 - ◆ Land size, topography, and access
 - ◆ Improvements and special land improvements
 - ◆ Value before acquisition (A note is to be made if the minor acquisition review valuation was used to determine just compensation.)



DOCUMENTATION**(cont.):**

Note: If prior verbal approval was obtained from the Central Office, this should be stated at the outset, and should include the date of approval and the name of the individual who granted the approval.

Ø Description of acquisition (if not a total acquisition)

- ◆ Land and improvements being acquired
- ◆ Grade change and access
- ◆ Any anticipated damages
- ◆ Description of remainder
- ◆ Fair market value offer, and including a breakdown of the offer

Ø Description of negotiations

- ◆ Concerns of owner (including why the owner feels the Department of Highways' offer is not indicative of the fair market value)
- ◆ Counteroffers
- ◆ Final counteroffer

Other data or concerns

Ø Documentation in support of justification for settlement

- ◆ Statements declaring that:
 - Offer is the least amount the property owner will accept
 - Relocation assistance is or is not involved in the acquisition
- ◆ Report listing the benefits to the Department of Highways

Note: This report should show how the settlement would eliminate the cost of litigation, risks, and exposure to a larger award issued by a commissioner or jury verdict. Any recent cases to support this argument are also to be included.

- ◆ Any aspect of the acquisition or evaluation process that may be particularly difficult for the Department of Highways to defend and gives further credence to the settlement
- ◆ Declaration that states, "I believe it is reasonable, prudent, and in the best interest of the Commonwealth to accept this settlement."

The Director of the Division of Right of Way and Utilities or the Acquisition Branch Manager may make an administrative settlement if one or the other approves. In such instances, whoever makes the settlement is to prepare the written documentation for such settlement. A copy of the approved settlement is to be forwarded to the district.

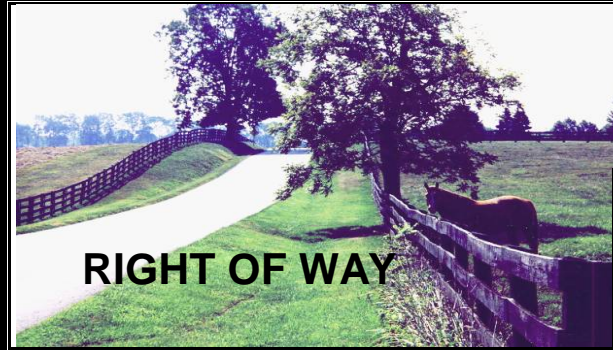


DOCUMENTATION**(cont.):**

When an administrative settlement is made on a parcel that involves owner-occupied relocation assistance, the settlement memorandum is to indicate whether relocation assistance is involved. A copy of the approved settlement is to be sent to the Relocation Branch Manager for a determination of the settlement's effect on the replacement-housing computation.

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	Section ADMINISTRATIVE SETTLEMENTS
	Subject Legal Settlements

GUIDELINES FOR LEGAL SETTLEMENTS:

A settlement made after legal action has been filed in Circuit Court is to be handled by the staff or contract attorney assigned to the case. The attorney may make a legal settlement when:

- Ø Settlement amount is in the best interest of the Cabinet
- Ø Approved by the:
 - ◆ Director of the Division of Right of Way and Utilities
 - ◆ Office of Legal Services

An attorney may agree to a settlement without Central Office approval when:

- Ø Settlement is reasonable and in the best interest of the Cabinet
- Ø Amount of the increase over the approved appraisal is \$2,500 or less

A recommendation of settlement is to be in writing to:

- Ø Director of the Division of Right of Way and Utilities
- Ø Office of Legal Services

The recommendation is to include the values of the:

- Ø Kentucky Transportation Cabinet's (KYTC's) appraisal and date of appraisal
- Ø KYTC's highest appraisal for court testimony from the pre-qualified appraisers' list and date of appraisal
- Ø Commissioner's award amount and date the money was posted
- Ø Proof of property owner appraisal

Note: Administrative or legal settlements must include written documentation.

- Ø Settlement offer and date of offer



**GUIDELINES
FOR LEGAL
SETTLEMENTS:**

The recommendation is also to describe:

- Ø Property before and after the acquisition
- Ø Impacts on any remaining property
- Ø Amount of all appraisals made for the Cabinet
- Ø Any appraisal values submitted by the owner
- Ø Reasons the settlement is prudent and in the best interest of the public

The following are to be provided spaces for indicating approval or disapproval:

- Ø Office of Legal Services
- Ø Director of the Division of Right of Way and Utilities

2 2 2

	Section ADMINISTRATIVE SETTLEMENTS
	Subject Court-Ordered Mediation

GUIDELINES FOR COURT- ORDERED MEDIATION

In an effort to reduce the number of cases on the dockets of the Circuit Courts, judges frequently demand mediation hearings of condemnation cases be held with court-appointed mediators. Both parties are required to appear before the mediator and attempt to reach a settlement agreement. Representatives of both sides, each having full settlement authority, are required to be present at the mediation hearing.

Only the Director of the Division of Right of Way and Utilities has full settlement authority. However, it is impractical for the director to attend all mediation hearings and therefore necessary for full settlement authority to be delegated to one of the following on a case-by-case basis:

- Ø District right-of-way supervisor
- Ø Assistant director
- Ø Central Office branch manager

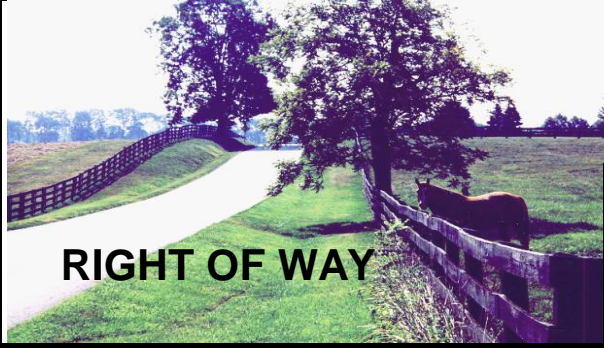
Upon notice that mediation has been scheduled, the director will provide the attorney the name of the person who will attend the mediation hearing on behalf of the director. The director will:

- Ø Contact the named individual who will represent the Cabinet at the hearing
- Ø Discuss the case with that individual

The assigned representative will have full settlement authority at the mediation hearing.

Settlements reached as a result of mediation will be documented by the trial attorney as any other recommendation for settlement, with a copy of the approved recommendation of settlement being placed in the project file.

2 2 2

	<i>Chapter</i> ACQUISITIONS
	<i>Subject</i> Changes to Approved Plans

OVERVIEW:

If a plan change requires additional right-of-way, the district is not to appraise or attempt to buy the additional right-of-way until it has obtained proper approval from the Division of Right of Way and Utilities and, when applicable, the Federal Highway Administration (FHWA).

Plan changes to projects on the interstate system and selected non-interstate projects require FHWA approval. Plan changes on other federal and state projects require approval of the State Highway Engineer.

The district design office returns completed plan changes to the district right-of-way and utilities offices and furnishes copies to the Central Office Acquisition Branch. Receipt of approved revised plans constitutes authority to proceed.

**PLAN CHANGE
DURING
NEGOTIATION
STAGE:**

When a plan change is necessitated as part of the negotiation, the district right-of-way supervisor is to request needed plan changes during the right-of-way acquisition stage. The supervisor's written request is to be submitted to the district design office accompanied by plan sheets indicating:

- Ø Changes to be made in red
- Ø Description of the effects that the changes have on utilities

If utilities are affected, the names of the companies involved are to be listed, and a copy of the request for change is to be provided to the Central Office Utilities Branch.

**PLAN CHANGE
DURING
CONDEMNATION
STAGE:**

It is the district right-of-way supervisor's responsibility to provide revised plan sheets and descriptions to the district attorney for any parcel that has been recommended for or is in condemnation.

**PLAN CHANGE
DURING
CONSTRUCTION
STAGE:**

A plan change during the construction stage is to be:

- Ø Requested by the Division of Construction
- Ø Routed through the Division of Right of Way and Utilities for endorsement
- Ø Sent to the Division of Highway Design for preparation

A construction change on an interstate system project or other selected project requires FHWA approval. Normal procedures for such a construction change include a field inspection with a FHWA representative present. When the FHWA approves the construction change, the acquisition of additional right-of-way is simultaneously approved.

2 2 2

	<i>Chapter</i> ACQUISITIONS
	<i>Subject</i> Special Acquisitions

**FINANCE AND
ADMINISTRATION
CABINET
PROJECTS:**

By mutual agreement, the Kentucky Transportation Cabinet may acquire real property for the Finance and Administration Cabinet (Finance) upon request. In the acquisition of such property, the KYTC is to follow the policies and procedures in this guidance manual except in cases where Finance policy takes precedence. Any variation from KYTC policy is to be documented thoroughly in the mutual agreement with Finance.

KYTC agents are to:

- Ø Maintain records of their expenses while performing work on Finance projects
- Ø Charge and interaccount the expenses to the project identification furnished by Finance

OTHER STATE

AGENCIES: An acquisition from any other state agency is to be completed by the district office or Central Office Right of Way and Utilities staff. The district right-of-way supervisor is to confer with the Acquisition Branch Manager to determine the most effective and expedient means of completing the acquisition. For an acquisition that can be better handled by the Central Office, the district supervisor sends the following documentation to the Acquisition Branch Manager:

- Ø Legal description of the property to be acquired
- Ø Copy of an approved appraisal
- Ø Title report
- Ø Two sets of plan and profile sheets
- Ø Right-of-way strip maps, if available
- Ø Special sheets affecting the property
- Ø Layout sheet

Upon receipt of such requests and appropriate documents, the Acquisition Branch Manager is to submit a request to the appropriate official of the agency having jurisdiction over such land for written concurrence in conveyance to the Cabinet. The request is to include:



**OTHER STATE
AGENCIES
(cont.):**

- Ø Plan sheets
- Ø Legal description of the land to be acquired
- Ø Copy of the approved appraisal
- Ø Right of entry and property transfer agreement

Upon receipt of an executed right of entry and property transfer agreement from the agency, the Central Office is to forward the following documents to the Finance and Administration Cabinet, Division of Real Properties, requesting the deed be executed by appropriate parties:

- Ø Right of entry and property transfer agreement
- Ø Copy of the appraisal
- Ø Proposed deed
- Ø Copy of the official order authorizing the project
- Ø Official order for execution by the Secretary of the Finance and Administration Cabinet authorizing the conveyance

**FEDERAL AGENCIES
(FEDERAL LAND
TRANSFER):**

An acquisition from a federal agency may be completed by the district office or Central Office Right of Way and Utilities staff. The district right-of-way supervisor is to confer with the Acquisition Branch Manager to determine the most effective and expedient means of completing the acquisition. If it is determined the acquisition can be handled more expeditiously by the Central Office, the same information required for state agency acquisitions is to be sent to the Acquisition Branch Manager.

The KYTC may file an application with the Federal Highway Administration (FHWA) or directly with the land-owning agency if that agency has its own authority for granting interest in land. For all other federal agencies, the Cabinet is to submit a request to the FHWA pursuant to 23 USC 107(d) and 317 as referenced in 23 CFR Part 710.601 (**Exhibit 01**). The Central Office is to handle acquisitions from federal agencies if the acquisitions are processed through the FHWA.

**GRANTOR
STIPULATIONS:**

Certain federal agencies require the Cabinet to comply with special stipulations prior to receiving right of entry. Generally, stipulations involve matters concerning divisions other than the Division of Right of Way and Utilities. Copies of such stipulations are submitted to the appropriate divisions for concurrence prior to formal approval and submission to the agency involved.

**ACQUISITIONS
FROM RAILROAD
COMPANIES:**

Acquisitions involving a railroad crossing are to be handled by the rails coordinator in the Division of Right of Way and Utilities. The following are to be sent by the district right-of-way supervisor to the rails Acquisitions Branch Manager:

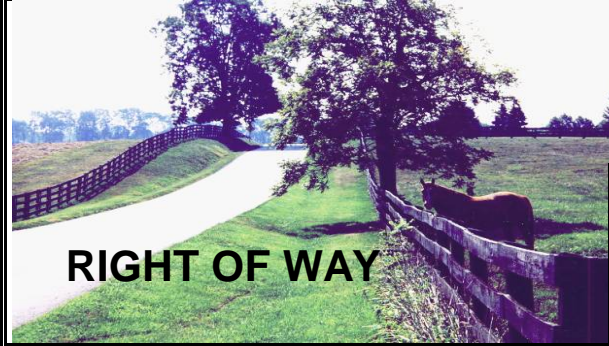


**ACQUISITIONS
FROM RAILROAD
COMPANIES (cont.):**

- Ø Written request for the acquisition
- Ø Copy of the approved appraisal or minor acquisition review, if applicable
- Ø Color-coded plan sheet showing the acquisition
- Ø Legal description of the acquisition

Acquisitions involving property other than a crossing from a railroad company can generally be handled by the district staff or a right-of-way consultant. However, it is recommended and more advantageous to have all acquisitions of railroad property be directed through the rails coordinator.

2 2 2

	<i>Chapter</i> ACQUISITIONS
	<i>Subject</i> Title to Be Acquired

**FEE SIMPLE
TITLE:**

In most instances, the Cabinet acquires fee simple title—that is, title and all interests and rights (including mineral rights unless the minerals are specifically excepted in the deed of conveyance). Interstate and other limited-access projects require a fee simple taking. Fee simple title is taken on all other projects unless conclusive proof shows that it is more economically feasible to take an easement for highway purposes because of the presence of minerals or other extenuating circumstances.

**SURFACE
RIGHTS ONLY:**

Minerals are excepted on interstate and limited-access projects only when studies, tests, etc., by experts prove conclusively that substantial savings will result. Should it clearly be more economically feasible to take title to the surface rights only, the owner may be permitted to retain minerals, with the stipulation that mining of the minerals may not interfere with the construction, maintenance, or full enjoyment of surface rights granted to the Commonwealth.

**SHARING OF
RIGHTS:**

Occasionally, public interest demands that the Cabinet recognize or define:

- Ø Air rights
- Ø Municipal water supplies
- Ø Other similar sharing of rights

In such case, the Cabinet is to take sufficient title to construct and maintain the proposed facility to assure that the facility is safe.

**EXCESS
PROPERTY:**

Excess property can be acquired only in fee simple. Title to excess property that has known contamination is not to be taken unless extenuating circumstances show that it is to the benefit of the Cabinet. The following information regarding excess property is to be provided to the Central Office property management specialist and tracked in the right-of-way and utilities computer program:

- Ø Size
- Ø Type
- Ø Zoning



**EXCESS
PROPERTY
(cont.):**

- Ø Location
- Ø Funding
- Ø Project

Note: The districts are to maintain a separate project file for any excess parcels acquired during project acquisition.

**WETLAND &
ENVIRONMENTAL
MITIGATION
SITES:**

Acquisitions of sites for the mitigation of the following are to be handled through normal acquisition procedures:

- Ø Wetlands
- Ø Natural habitats
- Ø Other appropriate environmental mitigation
- Ø "Wetland banking"

These acquisitions are to be completed pursuant to regulations covered by the Uniform Act (**Exhibit 05**) when the acquisitions are made as a result of a program or project receiving federal funding.

Note: A copy of the *Memorandum of Agreement* from the environmental document requiring mitigation specifications is to be attached to authorization requests.

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	Section NEGOTIATORS
	Subject Responsibilities of Negotiators

RESPONSIBILITIES

OF NEGOTIATORS: The responsibilities of negotiators include:

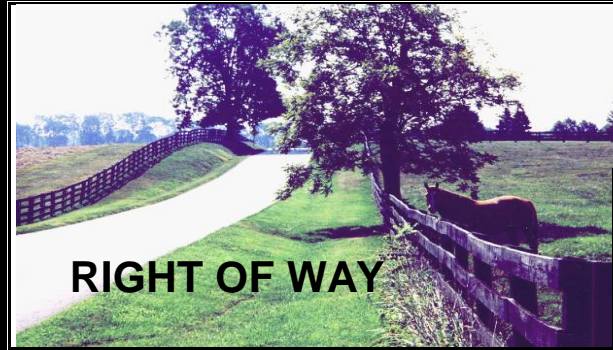
- Ø Having good communications and public-relations skills and a thorough knowledge of all acquisition policies and procedures
- Ø Dealing fairly and honestly with property owners or their representatives
- Ø Being courteous and professional at all times
- Ø Being concerned with problems that acquisitions present to property owners and providing assistance in resolving problems that can be reasonably resolved
- Ø Understanding and clearly explaining engineering features of projects, for example:
 - ◆ What buildings, trees, driveways, fences, shrubs, or other improvements will be affected
 - ◆ The distance from the traveled way to any improvements
 - ◆ Any other construction features that have a direct bearing on the property
- Ø Having a thorough understanding of the:
 - ◆ Appraisal process
 - ◆ Factors considered in arriving at the amount of compensation being offered
- Ø Avoiding the use of threats or coercion of any kind
- Ø Making no promises other than those shown on the plans or reflected by written agreement approved by the Cabinet
- Ø Refraining from threatening condemnation action during negotiations
- Ø Providing, if asked, a thorough explanation of the steps taken for condemnation, including:
 - ◆ Filing of action in Circuit Court
 - ◆ Appointing of commissioners and their reports
 - ◆ Applying right of appeal by all parties
 - ◆ Attaining right of entry and jury trial
- Ø Being familiar with eminent domain laws and clearly explaining to property owners their rights and any other recourse that might be available to them



**RESPONSIBILITIES
OF NEGOTIATORS****(cont.):**

Note: No person who has a past, present, or contemplated future interest in a parcel is to accept assignment as negotiator for that parcel. Each negotiator is to sign a certificate stating that he or she has no conflict of interest in the property.

2 2 2

	<p><i>Section</i></p> <p>NEGOTIATORS</p>
	<p><i>Subject</i></p> <p>Types of Negotiators</p>

STAFF**NEGOTIATOR:**

A staff negotiator, classified in the right-of-way series, is normally responsible for acquiring rights of way. The qualifications are set out in class specifications for the respective grades that have been furnished by a separate statement to the Federal Highway Administration (FHWA).

FEE**NEGOTIATOR:**

Responsibilities—A fee negotiator may be needed for:

- Ø Specific project in a district office with a small staff or with a large volume of properties to acquire
- Ø Complex properties, such as any of the following, where it is desirable to have a specialist:
 - ◆ Commercial
 - ◆ Industrial
 - ◆ Mineral
 - ◆ Special-use
- Ø Acquisition by:
 - ◆ Local public agency
 - ◆ Utility company

Qualifications—A fee negotiator is required to have an education and experience equivalent to those of a Right-of-Way Agent II and to be a notary public properly commissioned and bonded in the Commonwealth of Kentucky.

Selection Process—A fee negotiator is selected on the basis of qualifications and experience. Consideration is given to:

- Ø Types of properties to be acquired
- Ø Applicant's:
 - ◆ Experiences with similar contracts and projects with the Cabinet
 - ◆ Ability, availability, and willingness to complete the work in the time required



**CONSULTANT
NEGOTIATOR:**

Right-of-way acquisition consultants are to utilize negotiators having sufficient education and skills and experience necessary to acquire right-of-way in compliance with:


- Ø State and, if applicable, FHWA requirements
- Ø Current policies and procedures

Each consultant negotiator is to be a notary public properly commissioned and bonded in the Commonwealth of Kentucky.

The Director of the Division of Right of Way and Utilities is to approve negotiators used by a right-of-way consultant firm. Because acquisition complexities differ on projects, the consultant for each contract is to obtain approval of the negotiators to be used on that contract.

A current résumé for each proposed negotiator is to accompany the consultant's letter of interest. Any request to use a negotiator not included in the consultant's original letter of interest is to be accompanied by a current résumé.

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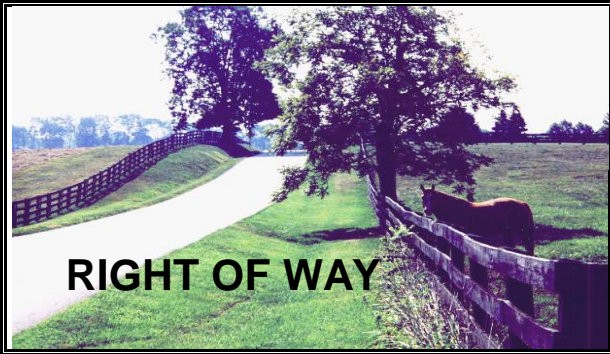
	<i>Chapter</i> NEGOTIATION PROCESS
	<i>Subject</i> Policy

POLICY:

Negotiations for rights of way are to be conducted by a staff or contract buyer as soon as practical after the approval of just compensation. The staff or contract buyer is to be:

- Ø Thoroughly familiar with the acquisition
- Ø Fully prepared for the negotiation by having studied the plans and approved appraisal
- Ø Knowledgeable of current policies and procedures

2 2 2

	<p><i>Chapter</i></p> <p>NEGOTIATION PROCESS</p>
	<p><i>Subject</i></p> <p>Preparing for Negotiations</p>

**PREPARATION
BY NEGOTIATOR:**

The negotiator is to:

- Ø Become familiar with all information concerning the project and parcel to be acquired

The negotiator can obtain this information from the:

- ◆ Comparable sales book
 - ◆ Right-of-way plans
 - ◆ Title reports
 - ◆ Deeds
 - ◆ Appraisals
 - ◆ Appraiser
- Ø Ensure the areas to be affected are the same in the:
 - ◆ Conveyance agreement description
 - ◆ Appraisal
 - ◆ Right-of-way plans
- Ø Discuss questions prior to the initiation of negotiations with the district right-of-way supervisor regarding:
 - ◆ Building retention or disposal
 - ◆ Trade of property

**LEASEHOLD
INTEREST:**

When the parcel being acquired is occupied by a tenant or is being leased to another entity, the negotiator is to research the parcel's title to see whether a release of leasehold interest is needed. If a tenant has no lease and rents month-to-month or has a month-to-month lease, a release is not necessary. If the tenant has a long-term lease, it may be recorded or unrecorded. A recorded lease is usually reflected in the title report; an unrecorded lease is more common and usually requires contact with the landowner or the tenant to establish its existence. If it appears that a tract may be wholly or partially leased, the negotiator is to question the landowner or the tenant or both prior to making the offer to see whether a lease exists. A tenant with a leasehold interest may be entitled to a part of the compensation and therefore is to be:



**LEASEHOLD
INTEREST (cont.):**

- Ø Party to the negotiations
- Ø Present when the offer to purchase is made

Leases are written in many different ways and need to be read thoroughly to ascertain their intent. Questions regarding the need for lease releases are to be discussed with the district attorney.

**TENANT-OWNED
REALTY:**

Tenant-owned realty is an item that the tenant owns and attaches to the property, making it part of the real estate. If tenant-owned realty has been separated out in the appraisal, a separate offer for this realty is to be made to the tenant. Prior to compensating the tenant for the realty, the negotiator is to obtain a written statement from the owner which:

- Ø Acknowledges the tenant's ownership
- Ø Disclaims any interest by the owner in the realty

The written statement is to be made a part of the file. If the acquisition results in legal action with the owner, a settlement on the tenant-owned realty can still be made if the owner provides a written statement acknowledging the tenant's ownership interest. If there is no settlement on tenant-owned realty, both the tenant and owner, and their spouses, if any, will need to be parties to the litigation.

LEASE RELEASES: Lease releases are required when one of the following is applicable:

- Ø Legal knowledge of a lease exists
- Ø Written lease agreement gives the lessee rights that will be affected by the acquisition.

The effect of the acquisition can be:

- Ø Direct, such as land-lease agreements that contain specific property descriptions (as in leases for billboard locations)
- Ø Indirect, such as in storefront agreements (as are used in shopping centers) where specific amounts of parking are guaranteed to a lessee

**RELOCATION
ASSISTANCE:**

The negotiator is to discuss with the relocation assistance agent the need to coordinate the appointment for presenting an offer when personal property is stored on affected parcels or displaces any of the following:

- Ø Individual
- Ø Family
- Ø Business
- Ø Farm operation
- Ø Nonprofit organization




**RELOCATION
ASSISTANCE
(cont.):**

At times, it is not apparent that an acquisition will affect personal property until after the negotiator has made the offer to purchase. As soon as it is learned that personal property needs to be cleared from the proposed right-of-way, the negotiator is to inform the district right-of-way supervisor of its presence so that the appropriate relocation assistance offer can be made.

2 2 2



	Chapter NEGOTIATION PROCESS
	Subject Documenting Negotiations

DOCUMENTATION: The following are to be prepared and maintained on a current basis for all parcels:

- Ø TC 62-77 form, *Record of Contacts* (**Exhibit 15**)
- Ø TC 62-83 form, *Parcel Summary* (**Exhibit 17**)

The *Record of Contacts* is to contain the following information regarding each owner and, if applicable, each spouse and any tenant:

- Ø Name
- Ø Address
- Ø Social security number

The negotiator is to review the title report with the owner to verify ownership of the property and discuss any release that may be required for a lien, a mortgage, etc.

Each property owner contact is to be recorded immediately after the meeting to ensure accuracy. The record is to show the:

- Ø Date
- Ø Time
- Ø Place of the meeting
- Ø List of all persons present, including the name of the negotiator

In the record detailing the first contact where price is discussed, a statement is to be made of the dollar amount offered. The record is also to state that a completed offer to purchase document was given to the owner or his or her representative. Any subsequent offer, due to a change in the offer of just compensation, is to likewise be recorded and the reasons for the revision explained.


The TC 62-77 form is to be inclusive of all pertinent items discussed, questions asked, and answers given. If an answer to a question cannot be given immediately, the answer is to be recorded in the record of a subsequent meeting. As much information as possible is to be included in the TC 62-77 form, including documentation regarding the retention of an improvement by the property owner.



DOCUMENTATION**(cont.):**

All negotiators actively involved in any discussion relative to compensation are to sign the TC 62-83A form, *Memorandum of Understanding* (**Exhibit 18**). This certification is to become a part of the district's permanent parcel file. *Records of Contacts* may be kept in hard copy or electronically. In either case, it is to be clear who was responsible for the work. If the parcel goes to condemnation proceedings, hard copies will be included in a file for the attorneys involved.

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	<p><i>Chapter</i></p> <p>CONTACTING PROPERTY OWNERS</p>
	<p><i>Subject</i></p> <p>General Responsibilities of Negotiators</p>

CONTACTS:

After proper authority has been received and preparation is completed, the negotiator is to set an appointment with the property owner. On the first meeting, any person representing the Cabinet in any capacity is to show the owner an official identification. Identification folders or photo cards have been provided for this purpose.

An owner that is involved in what is known to be an inevitable condemnation case (minor heir or other title problem) or an out-of-state resident is to be contacted first. A parcel involving relocation assistance is to be negotiated as soon as possible to allow for the timely relocation of the displacee. If relocation assistance is involved, the negotiator is to coordinate with the assigned relocation agent to allow:

- Ø Simultaneous presentations of the offer
- Ø Relocation entitlement benefits

The negotiator always attempts to contact each property owner personally. However, if the owner designates a person to be his or her representative, negotiations are conducted with the representative until directed back to the owner or directed otherwise by the owner. An attorney can make direct contact with the negotiator and state that negotiations on a parcel are to be conducted through him or her. All designees for an owner's negotiation are to be noted in writing, signed and dated by the owner.

If a parcel has more than one owner, it is desirable to have all owners present during all discussions. This is not mandatory but reduces the possibility of misunderstandings. In this case, it is advisable to confirm that the owners and ancillary owners have been updated.

Every effort is to be made to locate the owner of record. It may be necessary to:

- Ø Talk with heirs, relatives, and neighbors
- Ø Search courthouse records

If an owner cannot be located or property ownership cannot be established, condemnation action will be necessary to acquire the property. This may be necessary if a partial property interest cannot be determined. It is extremely importation to detail all efforts to contact owners in the record of contacts.



CONTACTS

(cont.):

If a property is subject to a leasehold interest, it is desirable for the lessee to be present during negotiations to reduce the chance of misunderstanding. In most short-term leases, it is necessary for the owner and lessee to agree to terms of a settlement before the interest of either party is acquired. If unusual circumstances exist, one interest may be acquired without the other with prior approval of the director. If tenant-owned realty is to be acquired, the lessee may convey the interest without a settlement of any remaining interest, provided the fee owner of the property signs a disclaimer to any interest in the tenant-owned realty.

The negotiator is to never be in such a hurry that the owner feels rushed. The negotiator, however, is to make every effort to help the owner make a decision within 45 days.

INITIAL

CONTACT:

During initial contact with an owner, the negotiator is to ask whether anyone having an interest in the property is a state employee and, if so, of what agency. Negotiations with a state employee are conducted as with any other owner. However, pursuant to KRS 45A.045(8), the negotiator is to explain that any acquisition from a state employee is to be approved by the:

- Ø Secretary of the Finance and Administration Cabinet
- Ø Governor

Because of these required approvals, the negotiator is to explain that payment cannot be made as quickly as normal but usually occurs within three to five months.

EXPLANATION

OF ACQUISITION:

To assure the owner fully understands the area to be acquired and the effect of the acquisition on the remainder, the negotiator is to give the owner:

- Ø Copy of the Kentucky Transportation Cabinet's (KYTC's) acquisition process brochure
- Ø Thorough explanation of the proposed acquisition including:
 - ◆ Review of the plans
 - ◆ On-site inspection of the property
 - ◆ Other acquisition means available

The negotiator is to initiate action to correct any error and resolve any problem before the offer of compensation is presented if either of the following occurs:



**EXPLANATION
OF ACQUISITION
(cont.):**

- Ø Error is found on the plans or in the appraisal during the explanation of the proposed acquisition.
- Ø Owner presents a legitimate problem.

The negotiator is to advise the relocation agent immediately of any circumstances in which a property owner previously thought to be ineligible may now be entitled to relocation assistance.

It is incumbent upon the negotiator to answer any questions the owner has relative to the way the property is being affected or about the project. However, the negotiator is not to give information regarding negotiations or appraisal amounts of other properties. If the negotiator does not know the answer to a question, he or she is to:

- Ø Secure the answer as soon as possible
- Ø Inform the owner
- Ø Record the answer on the TC 62-77 form, *Record of Contacts (Exhibit 15)*

Under no circumstances does a negotiator attempt to answer a question unless he or she definitely knows the answer.

**NEGOTIATIONS
THROUGH A
THIRD PARTY:**

Although not commonplace, there have been occasions where a firm has solicited property owners on a project to act as the firm's agent during negotiations for a needed right-of-way. If both parties agree, the firm typically receives a fee for any increase it can negotiate above the amount of the KYTC's offer. During the acquisition phase of a project, if an agent of the KYTC is contacted by an agent of any such firm, or an individual who presents himself or herself as a representative of a property owner in this manner, the procedures outlined below are to be followed:

The firm or agent is to:

- ◆ Show that it is a legitimate business registered with the Kentucky Secretary of State's Office
- ◆ Present any required local permits if requested
- ◆ Submit an original and properly signed document from the owner authorizing the firm's representation on their behalf.

The document is to be made a part of the parcel file and clearly identify the specific property by including the county, item number, parcel number, and owner's address.



**NEGOTIATIONS
THROUGH A
THIRD PARTY
(cont.):**

The initial contact with the firm for negotiation purposes should be made on-site of the subject property to allow for a complete review of the plans and the area of the acquisition.

It is not uncommon for an owner to seek advice from an appraiser, real estate agent, attorney, engineer, etc., and occasionally request these individuals to be a part of a negotiation meeting. The procedures above are not intended to supersede any procedures listed previously. However, there may be times when an owner will turn negotiations over to another party. In such cases, appropriate confirmation from the owner will be needed.

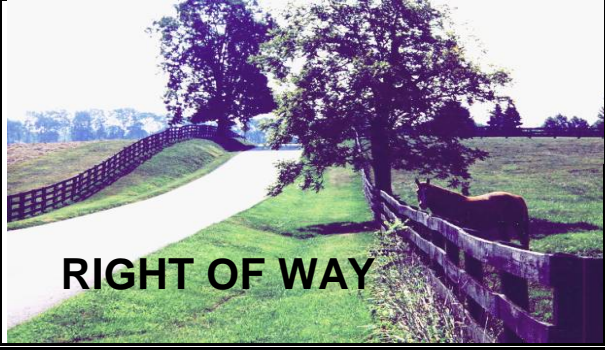
COUNTER OFFER: A letter requesting a counteroffer should be sent to the property owner when it appears that:

- Ø Parcel cannot be negotiated
- Ø Litigation will be necessary to gain title to the property

The letter is to be:

- Ø Sent prior to submitting the parcel batch for condemnation
- Ø Mailed directly to the property owner with a copy to the firm or individual representing the owner if applicable

2 2 2

	<p><i>Chapter</i></p> <p>CONTACTING PROPERTY OWNERS</p>
	<p><i>Subject</i></p> <p>Specific Responsibilities of Negotiators</p>

TRANSFER TAX: By law, transfer tax is a seller's expense (KRS 142 provides for payment of real estate transfer taxes by sellers). Transfer taxes are paid when the deed is put to record. Since property owners are not considered voluntary grantors of rights of way, it is the policy of the Transportation Cabinet to pay the transfer tax for them as part of the closing costs.

The combination of a fee simple acquisition and one or more easements can be taxed for the stated consideration. Acquisitions that do not involve fee simple takings may not be subject to transfer taxes.

Since easements may not be subject to the transfer taxes that fee acquisitions are, it is sometimes prudent to prepare separate instruments when the acquisition involves both. This is generally the case when the value of the easement or easements exceeds \$10,000.

**PROPERTY
TAX:**

Owners are to be advised of their right to claim a one-time reimbursement for property taxes attributable to land conveyed to the state. Reimbursement is to be pro-rated from the date the Cabinet acquires the property. A standard closing form is to be used, clearly stating the total liabilities of both the seller and buyer (Commonwealth of Kentucky) including taxes paid.

**INCIDENTAL
EXPENSES:**

Owners are to be advised that the Cabinet is obligated to pay directly, or reimburse owners, for actual and necessary expenses incidental to conveying rights of way such as:

- Ø Mortgage prepayment penalties
- Ø Costs of appraisals required to obtain mortgage releases
- Ø Mortgage release processing fees

A request for reimbursement is to be made on the TC 62-18 form, *Reimbursement Request for Incidental Expenses* (**Exhibit 19**), which is to be accompanied by a documented receipt.



PRESENTATION

OF OFFER:

On the first contact where price is discussed, the negotiator is to explain the basis for the offer of just compensation and that the amount offered is the full amount of the approved just compensation. After or simultaneous to making a verbal offer, the negotiator is to present an offer to purchase sheet. If the offer was based on an appraisal, the owner is to be provided a copy of the appraisal or a copy of either of the following:

- Ø Minor acquisition review
- Ø Valuation waiver

REVISED OFFER:

If the offer of just compensation is revised for any reason, the negotiator is to:

- Ø Present a revised offer to purchase document to the property owner or his or her representative
- Ø Explain the reason for the revision to the property owner
- Ø State the reason for the revision in the TC 62-77 form, *Record of Contacts* (**Exhibit 15**)
- Ø Provide a copy of the revised appraisal or the revised appraisal review to the owner

OFFER BY

CORRESPONDENCE:

Normally, a negotiator may initiate and complete negotiations with an out-of-state owner by correspondence. Through correspondence, the negotiator may contact either of the following:

- Ø Owner living away from the project area
- Ø Owner of an uncomplicated acquisition

In a letter, the negotiator is to include:

- Ø Purpose of the project
- Ø Description of the area to be acquired
- Ø Offer of compensation with an explanation of the basis for the offer
- Ø Copy of the appraisal (if appraisal was used to determine the offer)
- Ø Plan sheet(s) properly colored to depict the acquisition
- Ø TC 62-83A form, *Memorandum of Understanding* (**Exhibit 18**)
- Ø Deed of conveyance
- Ø Request that the deed be executed in the presence of a notary public
- Ø Invitation to meet the owner at the property to further explain or discuss the proposed acquisition

Within a few days after mailing the letter, the negotiator is to contact the owner by telephone to:

- Ø Ensure receipt of the correspondence
- Ø Answer any questions

2 2 2

	<p>Section</p> <p>SPECIAL SITUATIONS</p>
	<p>Subject</p> <p>Improvements</p>

**IMPROVEMENTS
WITH**

CONTAMINATION: Although a building is appraised as if clean and free of hazardous materials, the Kentucky Transportation Cabinet may require an owner to perform clean-up procedures prior to purchasing the property at its approved appraised value. The Director of the Division of Right of Way and Utilities or the Central Office property management specialist is to advise the district of the procedure to follow when negotiating for parcels with hazardous materials.

When the property owner is to retain an improvement known to contain hazardous material, the owner is to be advised of the:

- Ø Existence of the hazardous material
- Ø Requirement for compliance with local, state, and federal regulations regarding its removal

The district is to encourage an owner to contact the local Department for Environmental Protection office to review such regulations and requirements prior to making a decision to retain an improvement. (See the TC 62-41 form, *Improvement Removal Contract (Exhibit 20)*).

**RENTAL OF
IMPROVEMENTS:**

Generally, improvements are removed as soon as possible after right-of-way is obtained. However, improvements may be rented on a monthly basis if:

- Ø Occupant wishes to remain beyond the Cabinet's date of possession
- Ø Property is not needed for construction purposes for a substantial length of time

Rental will not start until the 30-day and 90-day notices have expired. Owners are given 30 days (rent-free) to vacate an improvement after the Cabinet obtains possession. Completing the TC 62-26 form, *Rental Agreement (Exhibit 21)*, is not required if an owner is to vacate by the 30-day vacation date. However, the date by which an owner is to vacate is to



**RENTAL OF
IMPROVEMENTS
(cont.):**

be reflected on the TC 62-83A form, *Memorandum of Understanding (Exhibit 18)*.

Note: The right-of-way supervisor may allow an owner to occupy an improvement rent-free beyond the 30-day vacation date if it is in the Cabinet's best interest and if sufficient time remains before the project's scheduled clearance date.

As part of the consideration for the property, an owner may be given up to 60 additional rent-free days to vacate. The TC 62-26 form is to be executed:

- ☐ If the owner expects to vacate after the rent-free period expires
- ☐ When the owner is paid for the property, with rent beginning when the rent-free period ends

Rental rate is:

- ☐ Calculated according to market conditions
- ☐ Determined by a district appraiser or replacement-housing evaluator

The district right-of-way supervisor may, however, accept a lesser amount if:

- ☐ Improvement cannot be rented for prevailing market values
- ☐ Prevention of a situation attractive to vandalism is desirable

If a lesser amount is accepted, the parcel file is to contain explanatory documentation.

An owner who has not been given additional rent-free days, but wishes to continue occupancy beyond the 30-day notice to vacate is to:

- ☐ Execute the TC 62-26 form when paid for the property
- ☐ Begin paying rent at the expiration of the 30-day notice to vacate

There is no rent-free period for tenants. Title to an improvement passes to the Cabinet when either the:

- ☐ Owners are paid their consideration
- ☐ Money is posted with the Circuit Court

The *Rental Agreement* is entered into with tenants when the owners are paid. Rental rates will continue in the amount having been charged by the owners.



**RENTAL OF
IMPROVEMENTS
(cont.):**

When a tenant vacates an improvement or property prior to the Cabinet obtaining a title to the property, consideration is to be given to paying the owner the fair rental price for the property until a title can be obtained. Items to consider include the:

- Ø Anticipated rental costs compared to the estimated cost for a replacement housing payment
- Ø Complexity of finding comparable replacement rental housing

The district right-of-way supervisor is to recommend in writing to the director of the Division of Right of Ways and Utilities that the property is to be rented, and state the

- Ø Amount of rent to be paid
- Ø Expected duration of the rental period

If approved by the director, the *Rental Agreement* is to be executed between the owner and the district right-of-way supervisor.

Owners and tenants are advised that rent payments are to be made to the Cabinet by either:

- Ø Money order
- Ø Certified check
- Ø Cashier's check

**RETENTION OF
IMPROVEMENTS:**

Prior to executing a deed, a property owner may be given the opportunity to retain an improvement for its approved salvage value. The salvage value will be deducted from the right-of-way payment.

A title to a retained improvement passes to the Cabinet with legal possession of the property and remains with the Cabinet until the improvement is removed.

The owner:

- Ø Will be required to execute the TC 62-41 form, which includes the terms and conditions of such removal
- Ø May begin removal of an improvement upon receipt of a letter from the district authorizing its removal

A performance bond is required to insure the improvement's complete and timely removal.

If an improvement is tenant-occupied, the tenant is to be given ample time to relocate and must actually vacate before the district issues a letter authorizing a property owner to remove an improvement. Tenants should be encouraged to notify the district if an owner tries to speed the tenant's relocation process along for the sole purpose of removing the improvement.



**RETENTION OF
IMPROVEMENTS****(cont.):**

The district is to discontinue utility service to all acquired improvements when payment is made for the property or when the improvement is vacated, whichever is later. (See **Chapter ROW-1203**, "Managing Acquired Improvements," for policies and procedures of the property management function).

**REMOVAL
REQUIREMENTS:**


The negotiator is to explain that the owner is to:

- Ø Have a specified period of time to remove improvements
- Ø Post a performance bond (negotiator is to advise the owner of the amount)
- Ø Comply with all local and state laws in said removal
- Ø Obtain any necessary permits
- Ø Comply with the specifications covering the condition in which the right-of-way is to be left (This applies under normal circumstances.)

The negotiator is to make every effort to assure that the property owner understands all the problems he or she may encounter in removing the improvement, including the penalty of bond forfeiture in the event of noncompliance.

The negotiator is to document in the TC 62-77 form, *Record of Contacts (Exhibit 15)*, the information regarding retention of an improvement by the property owner.

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	<p>Section</p> <p>SPECIAL SITUATIONS</p>
	<p>Subject</p> <p>Relocation Benefits</p>

**RELOCATION
BENEFITS:**

The Relocation Assistance Program is designed to assist the persons and businesses impacted by a transportation project in expediting their relocation in the most fair and cost-effective manner. Displacees must qualify for these benefits based on their individual needs. This assistance includes providing:

- Ø Brochures on relocation assistance
- Ø Advisory services
- Ø Moving payments
- Ø Supplemental housing payments
- Ø Closing cost payments
- Ø Other incidental expenses related to relocation

The following may receive payments for actual and reasonable moving and related expenses and reestablishment expenses or may receive fixed payments in lieu of these payments:

- Ø Businesses
- Ø Farm operations
- Ø Nonprofit organizations

(See the *Relocation Assistance Manual* for policies and procedures of the relocation assistance function.)

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	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Uneconomic Remnants</p>

**UNECONOMIC
REMNANTS:**

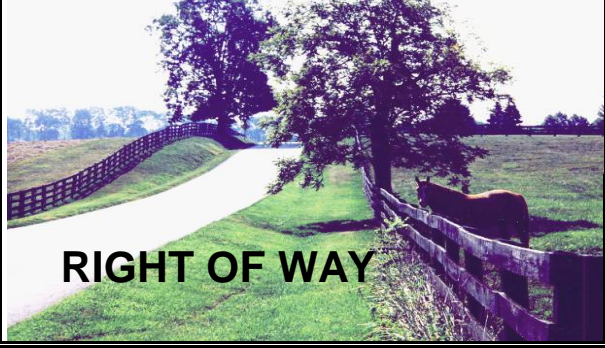
An offer is to be made to the property owner to purchase any remainder determined by the review appraiser to be an uneconomic remnant. An uneconomic remnant is a remnant property that has been determined by the Cabinet as having little or no utility or value to the owner. While the Cabinet may offer to purchase an uneconomic remainder, the property owner has the option to convey or retain the remainder. An uneconomic remnant is to be:

- Ø Acquired in fee simple
- Ø Described separately in the deed of conveyance

If condemnation action is necessary to acquire the needed right-of-way, the uneconomic remnant is not to be included in the suit.

During the course of negotiations, the right-of-way agent may discover circumstances that would cause a remainder to fall within the parameters of an uneconomic remnant. In this case, the agent, through the right-of-way supervisor, should submit a written recommendation to the Director of the Division of Right of Way and Utilities to classify the remnant as uneconomic. Upon the director's approval, an offer to purchase the remnant is to be presented to the property owner. The negotiator is not to make an offer to acquire any uneconomic remnant property that has been determined to contain contamination.

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	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Excess Property</p>

EXCESS PROPERTY

Excess property—property not actually needed for the project—is to be acquired when it is determined to be in the Cabinet's best interest. The parcel file is to include appropriate documentation. Excess property is to be acquired in fee simple and described separately in the deed. When excess property is purchased, the district right-of-way section is to maintain individual excess property parcel files containing the following documents:

- Ø TC 62-85 form, *Notice of Excess Purchased* (**Exhibit 22**)
- Ø 8 1/2 " x 14" reproducible plat
- Ø Legal description of the acquisition
- Ø Executed copy of the deed
- Ø TC 62-56 form, *Payment Summary* (**Exhibit 23**)

Upon receipt in the Central Office, the documents are to be filed with the Relocation Branch. A duplicate file containing the same information is to be retained in the district office project file.

See **Chapter ROW-1500** for procedures regarding disposal of excess property.

2 2 2

	<p>Section</p> <p>SPECIAL SITUATIONS</p>
	<p>Subject</p> <p>Trade or Exchange of Property</p>

TRADE OR EXCHANGE OF PROPERTY:

If an owner wishes to exchange or trade needed right-of-way for surplus property, the negotiator is to explain the process and the approvals that are to be obtained. Without prior approval of the Director of the Division of Right of Way and Utilities or the Acquisition Branch Manager, the negotiator is not to commit to more than a statement that he or she will recommend the excess be exchanged.

The TC 62-83A form, *Memorandum of Understanding (Exhibit 18)* is to include a statement indicating the property exchange agreement is not binding upon the parties until the proposed exchange is approved by the Finance and Administration Cabinet Secretary and by the Governor.

The district is to first determine that a trade can and should be made. Any trading or exchanging of property on federally funded projects is to have Federal Highway Administration approval. The trade may fall into one of two categories and is to be handled as follows.

PROPERTY ON ACTIVE PROJECT:

Property on an active project may be traded for right-of-way on that project. To initiate the trade, the right-of-way supervisor is to recommend that the property be declared surplus. The project engineer and the chief district engineer are to concur in the supervisor's recommendation. The district right-of-way supervisor is to complete the transaction and submit the following items to the Central Office:

- Ø TC 62-85 form, *Notice of Excess Purchased (Exhibit 22)*
- Ø Description and plat of the tracts of land to be traded
- Ø Value determination
- Ø Mailing address and social security number of the grantee
- Ø Any other information needed to properly prepare a deed of conveyance
- Ø Traded or exchanged properties are to be at equal fair market value determined before and after the appraisal of the needed right-of-way



**PROPERTY ON
ACTIVE
PROJECT (cont.):**

The value determination can be the appraised after-value when its value can be abstracted from the appraisal. When several excess tracts are combined, additional documentation in the form of a review value finding may be required.

The Division of Right of Way and Utilities is to have the deed prepared, executed, and returned to the district.


**PROPERTY NOT
ON ACTIVE
PROJECT:**

If the desired property is not on an active right-of-way project, the property is to be declared surplus before a commitment is made to trade the property. (For policies and procedures covering the disposal of surplus property, see **Chapter ROW-1500.**)

Any request of this type is to be submitted to the Division of Right of Way and Utilities with a request that the trade be completed. If the division approves the request, steps will be taken to have the documents processed.

The Commissioner of the Department of Highways or the Secretary of the Kentucky Transportation Cabinet may execute an exchange agreement following approval. If the exchange is approved, the owners are to make payment for the approved value of the excess. Payment for the deed of conveyance will be the gross amount of the agreement.

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<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>			
<p><i>Subject</i></p> <p>Donations & Waste Areas</p>			

DONATIONS:

A nongovernmental owner wishing to donate right-of-way is to:

- Ø Receive information of his or her right to a full appraisal
- Ø Acknowledge in writing that he or she is aware of the entitlement to an appraisal and just compensation

A separate certificate properly signed by the owner may be used if it refers to the specific deed of conveyance by project and date of the deed.

Property may be donated at any time. With prior approval from the Director of the Division of Right of Way and Utilities, a property owner may donate property in exchange for construction features or services beyond those normally afforded to every other property owner on the project. The value of the donation is limited to the fair market value of the donated property less the cost of the construction features or services. If the value of the donated property exceeds the cost of the construction features or services, the difference may be eligible for a credit to the Cabinet's share of project costs. Donations may not be accepted prior to a National Environmental Policy Act approved environmental document for the transportation project.

In addition to executing a deed, an owner wishing to donate right-of-way is to execute a notarized certificate stating the transfer is by gift. The notarized certificate is to include:

- Ø Estimated fair market value of the property being donated
- Ø Disclaimer that the owner(s) have not been asked or coerced by any state employee to make this donation

This requirement can best be accomplished by including the certificate in the deed of conveyance. Furthermore, the owner is advised that prior to claiming the deduction against taxable income, he or she is to consult a tax advisor for current Internal Revenue Service regulations relative to donations.



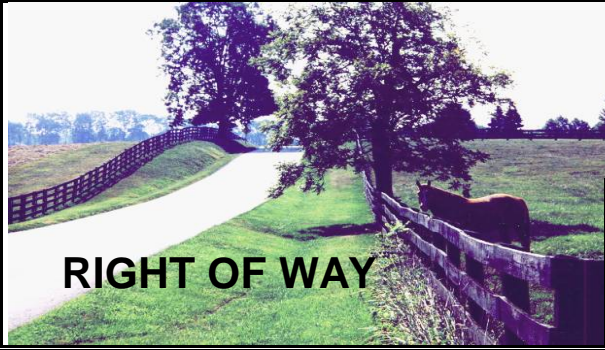
**DONATIONS
(cont.):**

The donated property may be credited to the Cabinet's matching share of the project. The amount of credit is to be based on the fair market value of the property on the date the donation becomes effective or on the date the property is vested with the state. See 23 CFR 710.505(b) (**Exhibit 01**) for other considerations for credits for donations.

WASTE AREAS:

Waste areas provided by the Cabinet are to be negotiated as any other parcel in accordance with established procedures.

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	<p><i>Section</i></p> <p>SPECIAL SITUATIONS</p>
	<p><i>Subject</i></p> <p>Signature Entrance Signs</p>

**SIGNATURE
ENTRANCE
SIGNS:**

Payment is to be made to relocate or replace a signature entrance sign if the sign is:

- Ø Owned by a city or county government and the sign is located on their rights of way
- Ø Located on an existing state-owned right-of-way and the local government demonstrates the sign existed prior to the establishment of the right-of-way

The following are not eligible for replacement or relocation costs:

- Ø Permitted signs on state rights of way
- Ø Signs owned by developers or neighborhood associations on public rights of way (city, county, or state)

Payment is to be handled as a cost-to-cure item and is limited to the cost to relocate or replace the existing sign with a similar sign. Costs for betterment of the sign are not to be paid.

Payment will be:

- Ø Based on the lowest estimate obtained by the district right-of-way office from two qualified contractors
- Ø Approved by the Director of the Division of Right of Way and Utilities

The estimate and payment may include the cost to replace the following around the sign:

- Ø Flowers
- Ø Shrubs
- Ø Lights
- Ø Irrigation systems

However, the estimate and payment are not to include the cost to acquire any land on which to relocate the sign.



**SIGNATURE
ENTRANCE
SIGNS (cont.):**

The local public agency and the district right-of-way supervisor are to enter into an agreement that identifies:

- ☐ Work to be completed
- ☐ Amount of payment to be made
- ☐ Date the sign is to be removed from the limits of roadway construction

2 2 2

	<p><i>Section</i></p> <p>NEGOTIATIONS WHERE AGREEMENT IS REACHED</p>
	<p><i>Subject</i></p> <p>Preparation of Conveyance Agreement</p>

**PREPARING DEED
OF CONVEYANCE
& GRANT OF
EASEMENT:**

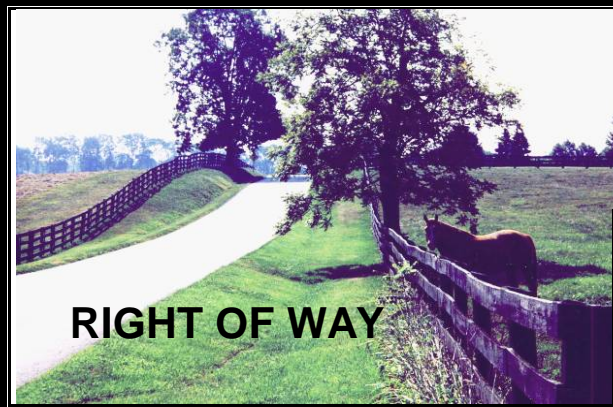
A deed of conveyance is used for acquisitions of rights of way on all projects. On rural secondary projects, the conveyance of property may be to the local government when the local government is to maintain the road.

When only an easement is needed, permanently or temporarily, a grant of easement, which describes the easement and sets forth the compensation to be paid, is prepared. This signed agreement may be used in the same manner as a deed to obtain payment.

Descriptions are obtained from district design personnel and placed on the appropriate form. Every conveyance agreement is to include:

- Ø Total consideration to be paid (cash and non-cash benefits)
- Ø Marital status of each party in the caption and acknowledgment certificate
- Ø Clause about each tract that establishes the type of interest being conveyed
- Ø Back source title information
- Ø Official order number authorizing acquisitions for the project
- Ø Type of highway access involved as defined in 603 KAR 5:010
- Ø Typewritten or stamped statement below the grantors' acknowledgment showing the name and address of the attorney who prepared the instrument

2 2 2

**Section**

NEGOTIATIONS WHERE AGREEMENT
IS REACHED

Subject

Execution of Conveyance Agreement

**EXECUTING
CONVEYANCE
AGREEMENT:**

When agreement is reached with the owner, a deed of conveyance or grant of easement is to be executed in the presence of either:

- Ø Negotiator
- Ø Notary public

No parcel may be considered complete until all parties of ownership have conveyed their rights to the Cabinet. Conveyance agreements for partial interest may be accepted in special situations and with prior approval of either:

- Ø Director of the Division of Right of Way and Utilities
- Ø Acquisition Branch Manager

In such circumstances, condemnation action is to be initiated to obtain titles to the remaining property interests.

When the property owner of record is deceased and no clear chain of title is on record, an affidavit of descent must be obtained. Affidavits can be obtained from either:

- Ø Heir of the deceased person
- Ø Two residents of Kentucky who are acquainted with all pertinent facts to establish current ownership

The affidavit is to be referenced in the conveyance agreement and put on record in the County Clerk's office.

If the owner is a corporation, the negotiator is to check the status of the corporation to make sure it is in good standing.

The negotiator is to obtain a properly signed original of the minutes of a board or membership meeting authorizing the signing of the documents or a resolution authorizing conveyance of the property if the owner is any of the following:



**EXECUTING
CONVEYANCE
AGREEMENT****(cont.):**

- ☐ Company
- ☐ Corporation
- ☐ Church
- ☐ Organization governed by a board or membership

The minutes or resolution is to specify the approved compensation and the names and positions of the authorized officers.

In accordance with Kentucky law, conveyance agreements are to be acknowledged by a notary public before they can be placed on record. Agreements executed outside Kentucky are to be acknowledged by a notary public and are to bear the seal of the notary executing them.

After identifying all parties who have an interest in the property and their sources of title, the negotiator completes the conveyance agreement in its entirety prior to execution of the document by the owner(s). The owner(s) and the negotiator are to initial any changes made in the agreement. A notary public is to be present when the document is executed. The state becomes legally obligated at this time to pay the owner the consideration amount for the property. The negotiator is to explain that a payment for the property is to be obtained and delivered to the property owner at a later date, usually in four to six weeks after all encumbrances have been cleared.

A person other than the parcel's appraiser or negotiator is to:

- ☐ Deliver the check
- ☐ Ensure that all liens or encumbrances against the property rights acquired are released prior to making payment

Immediately after the check has been delivered, the executed deed is to be taken to the County Clerk's office to be placed on record. The district is to return the recorded deed to the Central Office for permanent filing. A copy of the recorded deed is retained in the district's parcel file.

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	<p><i>Section</i></p> <p>NEGOTIATIONS WHERE AGREEMENT IS REACHED</p>
	<p><i>Subject</i></p> <p>Deed for Donations</p>

**DEED FOR
DONATIONS:**

An owner wishing to donate right-of-way is to acknowledge in writing that he or she is aware of the entitlement to an appraisal unless an appraisal is not required (as described under **Minor Acquisition Review** in **Chapter ROW-702**, "Initiating Negotiations") and to just compensation but waives that right and wishes to donate the property. This requirement can best be accomplished with a statement placed in the deed immediately before the owner's signature. A separate certificate properly signed by the owner may be used if it refers to the specific deed of conveyance by:

- Ø Project
- Ø Date of the deed

In addition to executing a deed, an owner wishing to donate right-of-way is to execute a notarized certificate stating:

- Ø Transfer of property is a donation
- Ø Owner has not been coerced in anyway by any state employee to make this donation
- Ø Estimated fair market value of the property being donated

Furthermore, the owner is advised that prior to claiming the deduction against taxable income, he or she is to consult a tax advisor for current Internal Revenue Service regulations regarding donations.

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	<p><i>Section</i></p> <p>NEGOTIATIONS WHERE AGREEMENT IS REACHED</p>
	<p><i>Subject</i></p> <p>Conveyance Involving a State Employee</p>

**STATE
EMPLOYEE:**

When a state employee conveys right-of-way, the payment request submitted to the Central Office is to be accompanied by a certification from the district right-of-way supervisor. The certification is to state that the state employee, because of his or her position, reached the agreement without any influence. The certification is to include the state employee's:


- Ø Name
- Ø Social security number
- Ø Agency of employment

A request is made for approval from the Finance and Administration Cabinet Secretary and the Governor upon receipt of the following in the Central Office:

- Ø Payment request
- Ø Certification

Because of these required approvals, it is to be explained that payment cannot be made as quickly as normal but usually is made within three to five months.

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 <p>RIGHT OF WAY</p>	<p><i>Section</i></p> <p>NEGOTIATIONS WHERE AGREEMENT IS REACHED</p>
	<p><i>Subject</i></p> <p><i>Memorandum of Understanding</i></p>

MEMORANDUM OF

UNDERSTANDING: The negotiator and the property owner execute, in duplicate, the TC 62-83A form, *Memorandum of Understanding (Exhibit 18)*, (purchase agreement) or a conveyance agreement (contract for deed) if used. A signed copy is to be left with the owner; the other signed copy is to become a part of the district's permanent parcel file.

If a parcel has multiple owners, the negotiator is to set forth in the TC 62-83A form the following including information pertaining to spouses:

- Ø Names
- Ø Addresses
- Ø Social security numbers
- Ø Amount of compensation each owner is to receive

All parties to the acquisition are to sign the TC 62-83A form. The check to each owner is to be issued as agreed.

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	<p><i>Chapter</i></p> <p>NEGOTIATION PROCESS</p>
	<p><i>Subject</i></p> <p>Negotiations Resulting in Condemnation</p>

OVERVIEW:

After all reasonable attempts have been made to negotiate for a property and no agreement can be reached, it becomes necessary for the Cabinet to exercise its right under the law of eminent domain to institute a condemnation action. When it is evident that a parcel cannot be purchased, the negotiator notifies the following that negotiations have reached an impasse:

- Ø Right-of-way unit leader for negotiations
- Ø District right-of-way supervisor

**PARCELS WITH
LEASEHOLD
INTEREST:**

If the acquisition of a parcel results in condemnation, the lessee is to be made a party to the suit just like any other entity having an interest in the condemned property. The only exception to this results when either the:

- Ø Lessee acknowledges in writing that he or she has no claim to an interest in the acquisition
- Ø Lease specifically excludes any interest (many leases contain condemnation clauses that clearly absolve the existence of any leasehold interest)

**REQUEST FOR
COUNTER-
PROPOSAL:**

To reach agreement on an acquisition in the right-of-way phase, the district right-of-way supervisor may write to the owner a letter, which

- Ø Acknowledges the status of negotiations
- Ø Invites the owner to present a written counteroffer, along with any documentation or justification

The letter is to:

- Ø Assure the owner that his or her response will be examined and consideration given to settlement on any issue he or she may present
- Ø Specify a date by which the counteroffer is to be received

Careful attention is to be made to construct a letter that does not threaten condemnation action to obtain a settlement.



**REQUEST FOR
COUNTER-**

PROPOSAL (cont.): When the right-of-way supervisor receives from the property owner a written counteroffer containing documentation that has merit, the supervisor or negotiator is to contact the property owner again to:

- Ø Discuss the issue of merit
- Ø Inquire, without commitment, whether an agreement can be reached if payment were allowed for those specific items

If the owner agrees to a settlement, the supervisor is to:

- Ø Write a recommendation for an administrative settlement
- Ø have Order a deed executed based on the agreed amount if the settlement is approved

The supervisor is to write to the property owner another personal letter courteously explaining that the parcel is being turned over to the legal staff to be prepared for condemnation action if either:

- Ø Response is received that has no issue of merit
- Ø Agreement cannot be reached based on the issue having merit
- Ø Reply has not been received by the indicated date

Once a parcel has been referred to an attorney for condemnation, no further contact is to be made with the property owner unless specifically requested by the attorney assigned to the case. A request made by the property owner to reopen negotiations or discuss the case is to be politely referred to the attorney.

IMPROVEMENTS: An owner may be given the opportunity to retain an improvement when such retention is in the Cabinet's best interest and approved by the:

- Ø Trial attorney assigned to the case
- Ø Director of the Division of Right of Way and Utilities

PLAN CHANGES: In addition to information outlined in **Chapter ROW-1004**, "Condemnation Transmittals," the district right-of-way supervisor is responsible for providing to the trial attorney:

- Ø Revised plan sheets
- Ø Descriptions for any parcel that has been recommended for or is in condemnation

FILING

CONDEMNATION: After the condemnation parcel batch is received in the Central Office and checked for accuracy, it is forwarded to the Office of Legal Services for assignment.

**RIGHT OF
ENTRY:**

In all condemnation actions the trial attorney assigned the action is responsible for notifying the appropriate district right-of-way supervisor of the date right of entry is received. It is imperative that this be done immediately, since the supervisor is responsible for:

**RIGHT OF
ENTRY (cont.):**

- Ø Issuing thirty-day vacation notices
- Ø Preparing clearance letters
- Ø Following other procedures dependent on the right-of-entry date

Note: Right of entries can be accepted only on unoccupied parcels.


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	<p><i>Chapter</i></p> <p>RIGHT-OF-WAY ACTIVITIES BY CONSULTANT</p>
	<p><i>Subject</i></p> <p>Policy</p>

POLICY: For the purpose of expediting the acquisition process or when special circumstances require, the Division of Right of Way and Utilities may elect to acquire rights-of-way through the use of qualified right-of-way acquisition consultants.

Appraisers used by the consultants or their subagents must be on the list of prequalified state appraisers. Staff review appraisers are to provide second-stage appraisal reviews, and the division director, or his or her designee, is to give final approval of all acquisition amounts. Division personnel are to monitor all real property acquisition activities by consultants or subagents of the state to assure compliance with state and federal laws and regulations and are to impose penalties in cases of material noncompliance.

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	<p><i>Section</i></p> <p>PREQUALIFICATION OF AN ACQUISITION CONSULTANT</p>
	<p><i>Subject</i></p> <p>General Information</p>


**ENLISTING
CONSULTANTS:**

Right-of-way consultants interested in acquiring rights of way for the Transportation Cabinet are to be prequalified to perform those services. Only firms that have been prequalified are to be considered for assignments to projects.

Advertisements are to be placed in at least two newspapers with statewide circulation and one minority-owned newspaper near the end of each calendar year, giving new firms the opportunity to request consideration for prequalification. Firms that have been previously prequalified are to be invited by letter to renew their prequalified status at the end of each year.

The Cabinet is to affirmatively ensure that any disadvantaged business enterprises afforded full opportunity to submit statements in response to a prequalification notice and are not discriminated against on the basis of race, color, sex, religion, national origin, age, or disability in consideration for a contract.

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	<p><i>Section</i></p> <p>PREQUALIFICATION OF AN ACQUISITION CONSULTANT</p>
	<p><i>Subject</i></p> <p>Criteria</p>

**PROJECT
MANAGER:**

Each firm is to have a project manager, who is either a staff member or a subcontractor committed to working exclusively for that firm. To qualify as project manager, the individual is to have a minimum of six years of experience in right-of-way acquisition under the laws of eminent domain and the Federal Uniform Relocation Assistance and Real Property Act of 1970, as amended, and demonstrated management skills.

**BUYING
AGENT:**

Each firm is to have an approved Level III Buyer who is either a staff member or a subcontractor committed to working exclusively for that firm. To qualify as a Level III Buyer, an individual must have a minimum of three years of experience in right-of-way acquisition under the laws of eminent domain and the Federal Uniform Relocation Assistance and Real Property Act of 1970, as amended, and be capable of negotiating complex acquisitions.

Note: While only two individuals meeting the above criteria are needed for prequalification, a firm submitting letters of interest for future contracts must have a right-of-way team with a sufficient number of individuals (either full-time employees of the firm or subcontractors) who are qualified and fully committed to administering the requirements of the proposed assignment. Qualification requirements for consultant personnel will be the same as those of similar positions within the Kentucky Transportation Cabinet's Division of Right of Way and Utilities.

**PROFESSIONAL
LIABILITY
INSURANCE:**

Each firm is to have a certificate of continuous professional liability insurance in an amount not less than \$500,000.

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	<i>Section</i> SELECTION OF ACQUISITION CONSULTANT
	<i>Subject</i> Project Report

PURPOSE:

A project report is a parcel-by-parcel study of a project. The report, along with right-of-way plans, is used by staff to estimate time required for services to be provided and to prepare a fee estimate for the project. The report also serves as a control measure of quality and cost of appraisals to be written and services to be provided on the project.

PREPARATION:

After final inspection plans are delivered to the district office for review, the district right-of-way supervisor is to have a project report prepared and submitted to the Central Office, along with a request for a right-of-way consultant. The request is to include the date the final right-of-way plans are expected to be submitted to the Central Office and a statement that the environmental document has been approved and the date a reevaluation is expected to be approved. Attach a copy of any MOUs from the environmental document that involve any right-of-way issues.

As soon as possible after it has been determined that a right-of-way acquisition consultant is needed, the district is to prepare and forward the TC 62-75 form, *Project Report (Exhibit 24)*, to the Acquisition Branch Manager. The district review appraiser, a qualified staff employee, or a prequalified contract review appraiser may prepare the report.

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	<p><i>Section</i></p> <p>SELECTION OF AN ACQUISITION CONSULTANT</p>
	<p><i>Subject</i></p> <p>Letters of Interest</p>

**SOLICITING
LETTERS OF
INTEREST:**

Upon receipt of a project report, the Central Office is to send a Purchase Request (PR) to the Division of Purchases, which is to include the submission requirements, right-of-way functions to be performed, contract provisions, and a fee proposal spreadsheet listing the parcels to be included in the contract and the right-of-way functions required on each parcel. Consultant services may include but are not limited to any of the following:

- Title reports
- Appraisals
- First-stage appraisal reviews
- Negotiations
- Relocation assistance
- Right-of-way closings
- Property management

Notices for right-of-way consultant services will be posted on the Kentucky eProcurement website.

**REVIEWING
LETTERS OF
INTEREST:**


Letters of Interest are received by the Division of Purchases and reviewed for compliance with submission requirements as stated in the solicitation notice. A copy of each acceptable letter is sent to the selection committee. The committee will then meet and evaluate each respondent. Criteria used to evaluate letters of interest are described in **ROW-903-3**, "Evaluation Factors".

**SELECTION
COMMITTEE:**

The selection committee shall consist of three members:

- Right-of-way supervisor in the district where the project is located
- Central Office Acquisitions Branch Manager
- One person chosen randomly by the Director of the Division of Right of Way and Utilities from a pool of the other eleven district right-of-way supervisors and the Central Office Relocation Branch Manager



	<p><i>Chapter</i></p> <p>SELECTION OF AN ACQUISITION CONSULTANT</p>
	<p><i>Subject</i></p> <p>Evaluation Factors</p>

EVALUATION FACTORS:

Evaluation factors to be considered in the selection of a consultant include:

Ø **Workload**

- ◆ Determination that a firm's current workload will not interfere with a satisfactory and timely completion of the proposed assignment
- ◆ Availability of assigned personnel consistent with clearance schedule
- ◆ Other commitments of assigned personnel

Ø **Experience**

- ◆ Understanding of the Department of Highways' operating procedures
- ◆ Consistency of personnel experienced in right-of-way acquisition to project tasks
- ◆ Consistency of personnel qualifications to project tasks
- ◆ Special or unique expertise

Ø **Knowledge/Expertise in Location**

- ◆ Familiarity with the type of project proposed
- ◆ Familiarity with the project locale, area, and neighborhood
- ◆ Accurate perception of unique or unusual appraisal or acquisition problems and satisfactory proposal to resolve such problems

Ø **Quality of Work on Past Assignments**

- ◆ Satisfactory compliance with required operating procedures
- ◆ Consistency with prescribed procedures
- ◆ Adequate documentation maintained
- ◆ Professional courtesies extended to property owners



**EVALUATION
FACTORS (cont.):****Ø Cooperation**

- ◆ Responsiveness to requests from those responsible for oversight on past assignments

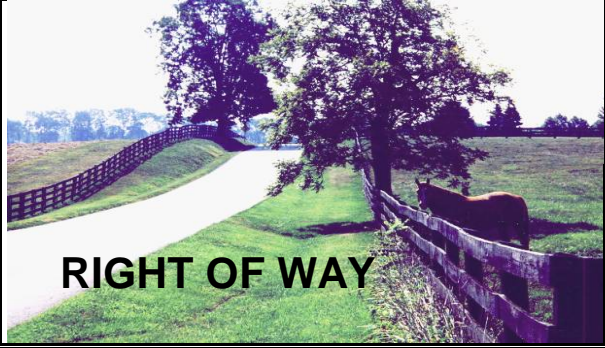
Ø Timeliness

- ◆ Performance in completing past assignments in a timely manner
- ◆ Commitment to meet clearance schedule

Ø Fee Proposal

- ◆ The fee proposal is to be considered but is not to be the sole determining factor.

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	Chapter RIGHT-OF-WAY ACTIVITIES BY CONSULTANT
	Subject Preparation of Contract

**PREPARING A
CONTRACT:**

The procedures are as follows:

1. After the committee completes its evaluation, the recommended consulting firm is notified and advised of its selection. If the consultant is willing to accept the assignment, the Division of Purchases prepares and submits a contract to the consultant for signature. The contract includes:
 - Ø Project description
 - Ø Scope of work and services to be provided
 - Ø Method and amount of payment
 - Ø Time of completion
 - Ø Other necessary special provisions and references to provisions that were a part of the solicitation notice
 - Ø References to general provisions that normally include those items as described in the department's *Professional Services Guidance Manual*
2. Upon receipt of the signed contract from the consultant, the Division of Purchases processes the contract for the necessary signatures and approvals as required by KRS 45A.

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**Chapter****RIGHT-OF-WAY ACTIVITIES BY
CONSULTANT****Subject**

General Provisions of a Contract

OVERVIEW:

The consultant is expected to provide the necessary management and labor to perform services required by the contract in a timely, professional manner. Only appraisers and review appraisers prequalified by the Division of Right of Way and Utilities are to be used. The consultant is to maintain a qualified staff who meets minimum state and, if applicable, Federal Highway Administration qualifications to perform all required services during the period of the contract.

Note: *The consultant is not to have as a member of his or her staff, or to employ as a subcontractor, any person who is a full-time, part-time, or temporary state employee.* Furthermore, the consultant and his or her employees and subcontractors are to have no past, present, or contemplated future personal or financial interest in any of the property included in the contract.

**MANAGER OF
PROJECT:**

The project manager is to be an employee of the selected firm or a subcontractor of the firm who has committed to work exclusively for the selected firm and is to be the individual named in the letter of interest.

**PROJECT
COORDINATION &
COOPERATION:**

The consultant and the Department of Highways are to coordinate their work and cooperate with each other in completion of their work. The project manager is to provide the department or, if applicable, the Federal Highway Administration, information about the status of the project or any parcel as requested and is to offer the opportunity to review any files.

Upon request by the Transportation Cabinet or, if applicable, the Federal Highway Administration, the consultant or his or her employees or subcontractors are to provide assistance in answering inquiries or provide additional documentation as required.

**APPRAISAL &
REVIEW
STANDARDS:**

All appraisal and appraisal-review work and reports are to be completed in accordance with the approved *Right of Way Guidance Manual* and current operating procedures. The Director of the Division of Right of Way and Utilities, or designee, is to approve all appraisals or offers of compensation prior to an offer being made to an owner.



**NEGOTIATING
STANDARDS &
PROCEDURES:**

All negotiations with property owners, or their representatives, are to be conducted courteously and professionally. Negotiations are to be performed and documented as described in **ROW-800**, "Negotiation Process," and/or in accordance with current KYTC operating procedures.

**RELOCATION
ASSISTANCE
PROCEDURES:**

Relocation assistance advisory services and determinations of eligibility for payment are to be performed in accordance with the approved *Relocation Assistance Guidance Manual* and/or current operating procedures. Care is to be taken to coordinate relocation assistance activities with buying to ensure offers are made at the same time and in accordance with policies and procedures.

**CLOSING
PROCEDURES:**

Closings are to be conducted by an attorney licensed to practice law in the Commonwealth of Kentucky. Closings are to be conducted in a timely and courteous manner and at the convenience of the property owners as practicable in accordance with **ROW-1003**, "Closings," and/or current operating procedures.

**PAYMENT
PROCEDURES:**

Upon the completion of services and the receipt of a properly completed TC 31-519 form, *Standard Invoice (Exhibit 16)*, and in accordance with procedures and fees established in the contract, the Transportation Cabinet is to pay the consultant in a timely manner for the services completed.

Standard invoices are to be submitted to the district right-of-way supervisor for approval of payment no more than once per month. Standard invoices submitted by the consultant are to be promptly reviewed and processed. Invoices that contain errors or omissions are to be returned to the consultant for correction.

**ADJUSTMENTS
TO CONTRACT:**

After a project's final right-of-way plans have been approved by the department, plan revisions may result in changing the scope of work required on existing parcels or in eliminating or adding other parcels.

Minor Plan Revisions—When a plan revision is considered minor (e.g., it does not affect the complexity of any phase of the acquisition for a given parcel), no change in the contract fee schedule is warranted.

Major Plan Revisions—If a revision affects the complexity of the appraisal phase, the contract fee schedule for the affected parcels within that phase can be adjusted by agreement. Consideration to fee adjustment is to be given for other right-of-way phases of the contract when the complexity of a right-of-way function for any parcel has been significantly affected by a plan revision or when circumstances arise that were unknown during preparation of the contract fee schedule.



**DELETING
PARCELS FROM
CONTRACT:**

When a plan revision results in the elimination of a contracted parcel, the district right-of-way supervisor is to notify the consultant in writing that the parcel has been eliminated. A copy of the supervisor's letter is to be sent to the Acquisition Branch Manager. Upon receipt of such notification, the consultant is to stop work on the deleted parcel, and no deed is to be taken for the parcel unless specifically authorized in writing by the Director of the Division of Right of Way and Utilities. Fees are to be paid only for work that has been completed.


**ADDING PARCELS
TO CONTRACT:**

When a plan revision results in the addition of a parcel, the district right-of-way supervisor is to provide immediate written notification to the Acquisition Branch Manager. The district review appraiser or other qualified staff member is to prepare a supplemental project report detailing the work required for the added parcel.

The district right-of-way supervisor is to provide the consultant a copy of the project report and request a fee proposal for all applicable right-of-way functions that affect the parcel. The right-of-way supervisor is send the Acquisition Branch Manager a notification that the parcel is to be added, a copy of the project report, and the consultant's fee proposal.

If the consultant's fee is acceptable, the Director of Right of Way and Utilities or the Acquisition Branch Manager is to provide written notice to the district right-of-way supervisor requesting the consultant to begin work on the added parcel. The consultant is not to begin work on the added parcel until written authorization is received. The fee paid for an added parcel is to be by agreement. Typically, the fee agreed upon is to be similar to that paid on another parcel of like complexity on the project. The fee is to be paid only for the phase or phases of work required on an added parcel. The same terms, conditions, and provisions of the contract are to apply to any added parcel as if part of the original contract.


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	<p><i>Chapter</i></p> <p>RIGHT-OF-WAY ACTIVITIES BY CONSULTANT</p>
	<p><i>Subject</i></p> <p>Contract Work Order</p>

**AUTHORIZING
WORK ORDER:**

When funds have been encumbered and the contract has been filed with the Legislative Research Commission, the Director of the Division of Right of Way and Utilities is to request the district right-of-way supervisor to authorize the consultant to begin right-of-way acquisition activities. The letter from the supervisor to the consultant is to specify the date that right-of-way work is to begin and the date that all right-of-way work is to be completed. A copy of the work order is to be sent to the Director of the Division of Right of Way and Utilities. Upon return from the Legislative Research Commission, the approved contract is to be forwarded to the district right-of-way supervisor and to the consultant.

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	<p><i>Chapter</i></p> <p>RIGHT-OF-WAY ACTIVITIES BY CONSULTANT</p>
	<p><i>Subject</i></p> <p>Contract Administration</p>

**RESPONSIBILITIES
OF CONSULTANT:**

The consultant is to channel all work products, inquiries, and requests through the district right-of-way supervisor responsible for the project.

**RESPONSIBILITIES
OF DISTRICT
STAFF:**

The district right-of-way supervisor and his or her staff are to administer right-of-way acquisition contracts. If the district has a heavy workload, the Director of Right of Way and Utilities may request the contract be assigned to another district for administration.


The district right-of-way supervisor is responsible for complying with the Department of Highways' responsibilities and obligations explained in the contract.

The supervisor is to promptly review parcel batches as submitted and routinely review the consultant's project files to ensure compliance with the rules and regulations and current policy and procedures of the Transportation Cabinet and, if applicable, the Federal Highway Administration. The supervisor is to document all such reviews and is to monitor the consultant's progress to ensure timely completion of the project.

The district supervisor is to review any recommendations for administrative settlements and, if in concurrence, is to so designate on the document before submitting it to the Central Office for approval.

Each completed TC 31-519, *Standard Invoice* (**Exhibit 16**), submitted by the consultant is to be promptly reviewed and processed by the district right-of-way supervisor. Invoices that contain errors or omissions are to be returned to the consultant for correction.

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	Chapter RIGHT-OF-WAY ACTIVITIES BY CONSULTANT
	Subject Project Files & Post-Evaluation

PROJECT FILES: Upon completion of the project or upon termination of the contract, the consultant is to submit to the district right-of-way supervisor all files and documents of the project required to be maintained as outlined and described in the *Right of Way Guidance Manual* and the *Relocation Assistance Guidance Manual*.

POST-EVALUATION: Upon completion of the project, the district right-of-way supervisor and Central Office Right-of-Way staff are to complete an evaluation of the consultant's performance and compliance with the contract and current policies and procedures. A copy of the evaluation is to be sent to the consultant, who is to be allowed 30 days to make comments. Any response by the consultant is to be attached to the final evaluation and placed in the project file.

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	Chapter RIGHT-OF-WAY ACTIVITIES BY CONSULTANT
	Subject Local Public Agency Contracting


POLICY: When a Local Public Agency (LPA) having agreement responsibility for right-of-way acquisition involving state or federal funds assumes responsibility for compliance with all state and federal laws and procedures as outlined in the approved *Right of Way Guidance Manual* elects to employ a right-of-way acquisition consultant, the head of the LPA is to request approval from the Director of the Division of Right of Way and Utilities to employ a consultant.

RESPONSIBILITIES: The LPA is to comply with the right-of-way consultant contracting procedures of the Division of Right of Way and Utilities except that:

- Ø The contract is to be a third-party contract by and between the department, the LPA, and the consultant
- Ø The head of the LPA is to assume administrative responsibilities in consultation with the district right-of-way supervisor. However, all administrative settlements must be approved by the district right-of-way supervisor.
- Ø The district right-of-way supervisor is to:
 - ◆ Monitor real estate property acquisitions activities
 - ◆ Provide guidance to the head of the LPA to assure compliance with departmental operating procedures
 - ◆ Inform the LPA of all such requirements
 - ◆ Impose sanctions in cases of material noncompliance

Agency contracting procedures are to follow all state and federal regulations for open and competitive bidding and are subject to audit by state and federal funding agencies.

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	<p><i>Chapter</i></p> <p>PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSING</p>
	<p><i>Subject</i></p> <p>Policy</p>


POLICY: The Division of Right of Way and Utilities shall promptly conclude transactions of acquired properties or, when a property cannot be negotiated, shall submit the parcel for condemnation in a timely manner.

All outstanding liens and objectionable encumbrances shall be satisfied prior to taking a deed.

Immediately after execution of a deed, the individual handling the parcel shall submit a request for payment to the Central Office. All deeds and, if appropriate, grants of easement will be filed for record at the County Clerk's office within three (3) working days after the check is delivered.

Parcel negotiations resulting in condemnation shall be promptly submitted to the Central Office for litigation.

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	Chapter PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSES
	Subject Acquisition Payments

**REQUESTS
FOR CHECKS:**

If a parcel has multiple owners, the negotiator is to set forth on the TC 62-83A form, *Memorandum of Understanding* (**Exhibit 18**), their names, addresses, and social security numbers and the amount of compensation each owner is to receive. All parties to the acquisition are to then sign the same *Memorandum of Understanding*. Checks are to be issued to the owners as agreed.

**SUBMITTING
PAYMENT
REQUEST:**

Care is to be used to ensure the areas shown in the deed, in the appraisal, and on the right-of-way summary sheet all agree. The dollar amounts and total consideration are to be the same as those reflected in the latest approved appraisal and the completed TC 62-89 form, *Offer to Purchase* (**Exhibit 25**), or on an approved administrative settlement.

It is incumbent on the negotiator to submit the payment request within three days of receipt of the signed conveyance agreement.

Processing a payment requires completing the following:

- Ø TC 62-56 form, *Payment Summary* (**Exhibit 23**), signed by the negotiator and district right-of-way supervisor
- Ø Memorandum approving an administrative settlement, when applicable
- Ø TC 62-89 form, *Offer to Purchase* (**Exhibit 25**)
- Ø A copy of the approved MAR computation and value range findings when applicable
- Ø TC 62-83A form, *Memorandum of Understanding* (**Exhibit 18**)
- Ø Minutes or resolution of corporation or organization, when applicable
- Ø TC 62-77 form, *Record of Contacts* (**Exhibit 15**)
- Ø Copies of any correspondence referred to in the *Record of Contacts*
- Ø TC 62-83 form, *Parcel Summary* (**Exhibit 17**)
- Ø Executed conveyance agreement TC 62-85 form, *Notice of Excess Purchased* (**Exhibit 22**), when applicable



**PURCHASE OF
EXCESS
PROPERTY:**

When excess property is being acquired, the deed is to be checked to ensure that fee title is being taken and that the deed includes a waiver of the eight-year rule. The District Right-of-Way Section is to maintain the following documents on a project basis in individual excess property parcel files until three years after completion of the construction project. (See **ROW-1500** for procedures regarding disposal of excess property.) Information regarding excess purchases should be posted to a master file on a computer system for future tracking and disposal purposes. The district supervisor/excess property coordinator shall maintain a monthly updated spreadsheet outlining any actions that have taken place involving excess properties in the past 30 days and provide a copy to the Central Office branch manager in charge of property management issues.

- Ø TC 62-85 form, *Notice of Excess Purchased* (**Exhibit 22**)
- Ø 8 ½" x 14" reproducible plat
- Ø Legal description of the excess purchased
- Ø Copy of the right-of-way deed
- Ø Copy of the TC 62-21A form, *Condemnation Pay Statement* (**Exhibit 26**)

**AFTER SUBMITTING
PAYMENT
REQUEST:**

The negotiator is to prepare a letter advising the property owner of the owner's right to claim a one-time reimbursement of a prorated share of real-property taxes. The district right-of-way supervisor is also to be advised that an updated title report is needed for closing.

**AUDIT OF
PAYMENT
REQUEST:**

The Records and Billing Section periodically checks payment requests as follows:

- Ø Conveyance agreements, forms, and records are examined for complete and correct project identification.
- Ø Names and parcel numbers are examined and checked against the record plans to see that they are correct and identical on all documents.
- Ø Monetary figures are checked for accuracy or approved administrative settlement.
- Ø If the property owner has retained an improvement, the *Condemnation Pay Statement* and the *Record of Contacts* are checked to ensure proper allowance has been given for the privilege of the owner to retain the improvements.




**ISSUANCE OF
CHECK:**

Upon submittal of properly documented payment requests, all documents applicable to excess property are held in a suspense file to await payment for the parcel and, when applicable, proper credit to the Federal Highway Administration.

Applicable check information on the transmittal sheets is recorded on the TC 62-56 form, *Payment Summary* (**Exhibit 23**).

The check is returned to the district for closing.

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	<p><i>Chapter</i></p> <p>PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSING</p>
	<p><i>Subject</i></p> <p>Closings</p>

TITLE REPORT: When a check in payment of right-of-way is requested, the attorney who prepared the title report is asked to bring the title examination up to date. The attorney usually certifies that the examination has been made and that it reflects additional title information by completing and signing the final certificate on the original title report. After the title report has been updated, it is placed in the district's parcel file.

DELIVERY OF CHECK: A person other than the parcel's appraiser or negotiator is to deliver the check and ensure that all liens or encumbrances against the property rights acquired are released prior to making payment.

The amount of the check is to be noted on the TC 62-56 form, *Payment Summary (Exhibit 23)*, and the form is to be signed and dated by the person delivering the check.

REMINDERS TO OWNERS: An owner is to be reminded that he or she cannot remove an improvement until he or she has received from the district a letter authorizing removal. Until vacated by the tenant, an improvement cannot be released to an owner for removal. Rent collected from the tenant after payment of consideration is to be made payable to the Transportation Cabinet by money order, certified check, or cashier's check.

If a building retained by an owner contains hazardous material, the owner is to be reminded of the existence of hazardous material and the requirement for compliance with local, state, and federal regulations regarding its removal.

CHECK DELIVERY BY MAIL: To save personnel time and expense, the check may be sent to a property owner by mail whenever possible.



RECORDING &

FILING OF DEED: Immediately after the check has been delivered the executed deed is to be taken to the County Clerk's office to be placed on record. The district is to return the recorded deed to the Central Office for permanent filing. A copy of the recorded deed is retained in the district's parcel file.

POST-SURVEY: Promptly after payment has been made, the district right-of-way supervisor is to see that the TC 62-90 form, *Property Owner Opinion Survey (Exhibit 27)*, is mailed to the property owner. To be enclosed with the survey is a postage-paid envelope addressed to the Division of Right of Way and Utilities in Frankfort.

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**Chapter**

PAYMENTS, CLOSINGS, &
CONDEMNATION PROCESSING

Subject

Condemnation Transmittals

**SUBMITTING PARCEL
BATCHES:**

The negotiator is to prepare a parcel batch for condemnation. The parcel batch is to be given to the district right-of-way supervisor for approval and for submission to the Acquisition Branch Manager and district attorney. If the district does not have an attorney, the entire parcel batch is submitted to the Acquisition Branch Manager. A copy of all items sent is to be retained in the district's parcel file. It is incumbent on the negotiator to submit the condemnation transmittals within three days of failed negotiations.

Districts with an attorney are to submit parcel batches as follows:

To District Attorney	To Acquisition Branch Manager	
1 Copy	2 Copies	TC 62-21A form, <i>Condemnation Pay Statement</i> (Exhibit 26)
1 Copy	2 Copies	TC 62-83 form, <i>Parcel Summary</i> (Exhibit 17)—The negotiator is responsible for checking the accuracy of the deed description and certifying so on this form. The names and addresses of <u>all</u> defendants are to be shown.
1 Copy	2 Copies	TC 62-77 form, <i>Record of Contacts</i> (Exhibit 15), and all correspondence with property owners
1 Copy	1 Copy	TC 62-89 (Exhibit 25) form, <i>Offer to Purchase</i> letter.
1 Copy	2 Copies	Affidavit of descent, lease, or other title information
1 Copy	2 Copies	Complete, accurate description of the property to be acquired
2 Copies	2 Copies	Up-to-date title report
1 Copy	1 Copy	TC 62-20.1 form, <i>Appraisal Report</i> (Exhibit 12)—The appraisal sent to the district attorney is to include original photographs of the property. If a minor acquisition review was used, two copies of the calculations are to be sent to the Acquisition Branch Manager.
3 Copies	1 Copy	Plan sheets colored to show the property to be acquired— Additional copies of colored plan sheets may be required in certain counties. The colors to depict the acquisition are to be blue, for fee simple; red, for permanent easement; green, for temporary easement; and yellow, for existing right-of-way.



CONDEMNATION

AUTHORIZATION: The Acquisition Branch Manager and his staff will review each transmittal for required content and the outstanding issues that have led to the parcel being recommended for condemnation action. If it appears reasonable efforts were made to secure a settlement with the property owner, and it is unlikely further negotiations would be productive, the Right of Way Division Director sends a written request to the Office of Legal Affairs recommending a condemnation action be initiated.

CONDEMNATION

PAYMENTS: In order for the Transportation Cabinet to have possession of a condemned property, the Circuit Court must have signed and entered an interlocutory order and judgment (IOJ). Subsequent to entering an IOJ, the state must post with the Circuit Clerk the sum awarded to the property owner by a Commissioners' Award, a court judgment, the amount of an agreed IOJ, or the amount of an agreed order settling the case.

When the Cabinet obtains judgment on a property and has possession, the attorney notifies the district right-of-way supervisor, who is to see that a tax letter is prepared and sent to the property owner. The letter is to advise the owner of his or her right to claim a one-time reimbursement of a prorated share of real property taxes. When a settlement is made prior to possession, the attorney is to notify the district right-of-way supervisor, who is to see that the letter is mailed to the property owner.


Payments for posting of judgments taken in circuit court, jury verdicts, or settlements of condemnation actions are processed through the Division of Right of Way and Utilities.

The district attorney forwards by memorandum a request for payment. The request is supported by the following documents.

- Ø Commissioners' report, court order, judgment, or executed conveyance agreement (whichever is applicable)
- Ø TC 62-21A, *Condemnation Pay Statement* (**Exhibit 26**)
- Ø Authorization for settlement (where applicable)

Checks issued for these payments are forwarded to the district attorney for proper distribution.


The trial attorney has authority to settle any case for an amount not to exceed \$2,500 more than the approved appraisal. However, the attorney may submit offers of settlement in excess of this amount with a recommendation as to further proceedings. The attorney's recommendation is approved or rejected by the Office of Legal Services and the Division of Right of Way and Utilities. If these two offices cannot agree after consultation, ultimate authority rests with the Secretary of Transportation.

	<p><i>Chapter</i></p> <p>PAYMENTS, CLOSINGS, & CONDEMNATION PROCESSING</p>
	<p><i>Subject</i></p> <p>Incidental Expense Reimbursement</p>

REQUESTING

REIMBURSEMENT: All requests for incidental expense reimbursement are to be made on the TC 62-18 form, *Reimbursement Request for Incidental Expenses* (**Exhibit 19**). Reimbursement requests are to be signed by the claimant and approved by the district right-of-way supervisor.

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	<p><i>Chapter</i></p> <p>BID PACKETS</p>
	<p><i>Subject</i></p> <p>Purpose, Authority, Scope, Policy, & Definitions</p>

PURPOSE: To establish uniform procedures for submitting bids packets to clear right-of-way improvements and human remains from acquired rights of way.

AUTHORITY: All right-of-way contracting must comply with both state and federal regulations and laws, including:

Ø Federal Regulations:

- ◆ 49 CFR 18.36 (a)
- ◆ 49 CFR 18.37(a)
- ◆ 23 CFR 710.201(a)
- ◆ 23 CFR Part 200
- ◆ 23 CFR 1.33

Ø Kentucky Revised Statutes:

- ◆ KRS 45.451–45.458
- ◆ KRS 45A.045
- ◆ KRS 45A.100

Ø Kentucky Administrative Regulations:

- ◆ 200 KAR 5:302
- ◆ 200 KAR 5:304
- ◆ 200 KAR 5:311
- ◆ 200 KAR 5:315

SCOPE: For use by appropriate right-of-way staffs of the Central Office and district offices and by the staff of the Office of General Counsel and Legislative Affairs

POLICY: The Division of Right of Way and Utilities shall comply with KRS 45A, the Model Procurement Code, and related administrative regulations when soliciting bids and awarding contracts for the removal of improvements or human remains from right-of-way limits.




DEFINITIONS:

bid list: Source list

bid packet: Documents assembled for distribution to prospective bidders

source list: List of qualified contractors that includes and identifies (Bid List) all disadvantaged business enterprises (DBEs) certified by the Cabinet's Office of Minority Affairs

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	<p><i>Chapter</i></p> <p>BID PACKETS</p>
	<p><i>Subject</i></p> <p>Source List (Bid List)</p>

SOURCE LIST: The division is to maintain a bid list and other sources of information to foster the highest possible level of competition among vendors interested in doing business with the Commonwealth of Kentucky.

Each district is to maintain a list of qualified contractors interested in relocation of human remains and a list of qualified contractors interested in removal of improvements. The bid lists are to include and identify all disadvantaged business enterprises (DBEs) certified by the Cabinet's Office of Minority Affairs.

No contact of any type may be made with a vendor who has been removed from the source list except for vendors removed for failure to respond to five bid invitations.

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	<p><i>Chapter</i></p> <p>BID PACKETS</p>
	<p><i>Subject</i></p> <p>Removal or Suspension from Source List</p>

POLICY: Bidders who respond to solicitations issued by the Division of Purchases on behalf of the Division of Right of Way agree to comply with all terms, conditions, and specifications of the bid invitation. Failure to meet any term, condition, or specification can be grounds for removal from the bid list for a period not to exceed 24 months.

REMOVAL: The following acts are specific reasons for removal or suspension from the source list and are included in all bid packets:

- A. Failing to post required bid or performance bonds (or in lieu of a bond to provide an alternative guarantee in a form acceptable to the division), as required by the invitation for bids or solicitation for proposals
- B. Substituting commodities without the written approval of the Director of the Division of Right of Way and Utilities
- C. Failing to meet terms and conditions specified in a bid invitation or a contract
- D. Failing to replace inferior or defective materials, equipment, or supplies immediately after notification
- E. Failing to respond to five consecutive invitations sent to the bidder
- F. Refusing to accept a contract awarded pursuant to the terms of an invitation for bids or following the close of competitive negotiations
- G. Falsifying invoices, making false representations or untrue statements about any payment under a contract, or inducing a modification in the price or terms of a contract to the contractor's advantage
- H. Colluding or collaborating with another bidder in the submission of a bid or bids for the purpose of lessening or reducing competition
- I. Falsifying information in a request to be placed on a vendors' list
- J. Failing to report and pay the Kentucky sales and use taxes as required by law
- K. Failing to comply with the prevailing wage law requirements of state or federal laws as may be applicable to any public-works contract of the Commonwealth



VIOLATIONS:

Any contractor preliminarily determined to have violated any requirement of the items A through F above shall, at the discretion of the Commissioner of Highways, be liable to be placed on probation or suspended from bidding to the Commonwealth, or a combination thereof, for not more than 12 months [200 KAR 5:315 Section 2(1)].

Any contractor preliminarily determined to have done any act prohibited by the items G, H, and I above shall be removed from the bidders list and shall be ineligible for reinstatement for a period not to exceed 24 months [200 KAR 5:315 Section 2(2)]. Any contractor removed from the source list under this section may be eligible to apply for reinstatement after the expiration of the removal period as provided in 200 KAR 5:304.

Except for the items E and F, a preliminary written determination concerning any violation of the items above shall be submitted to and reviewed by the Transportation Cabinet's Office of Legal Services prior to administration of any disciplinary action authorized by 200 KAR 5:315.

DISCIPLINARY ACTION:

Notice of disciplinary action is to be sent by certified mail, return receipt requested, to the bidder or contractor at the address shown in the records of the Division of Right of Way and Utilities. Bidders removed from the bid list for disciplinary action may appeal the action to the Transportation Cabinet Secretary.


This appeal is to be in writing, stating the reason(s) for reconsideration, and is to be made within 10 working days after receipt of the disciplinary action, as shown by the certified mail receipt. The appellant may request a formal hearing before a hearing officer or an informal hearing to be conducted by the Commissioner of Highways [200 KAR 5:315 Section 4].

No contact of any type may be made with a vendor who has been removed from the bid list except for vendors removed for failure to respond to five bid invitations. Districts are to be promptly informed of contractors removed from the bid list and are to take immediate steps to comply with this requirement.

Disciplinary action referred to here does not preclude the taking of other appropriate legal action by the Cabinet.

[KRS 45A.110 - 200 KAR 5:315] [200 KAR 5:304]

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	<p><i>Chapter</i></p> <p>BID PACKETS</p>
	<p><i>Subject</i></p> <p>Contract Management</p>

**CONTRACT
MODIFICATION:**

During the period of the contract, no modification is to be permitted in any of its conditions and specifications unless the contractor receives written approval from the director of Right of Way and Utilities and the Division of Purchases.

Upon finding at any time that existing conditions make modification of the contract necessary, the contractor is to promptly report such matter, in writing, through the right-of-way supervisor to the director of Right of Way and Utilities for consideration and decision. The contractor's report is to describe the additional work required and include a bid for the additional work. The supervisor is to review the contractor's report and bid and recommend appropriate action to the director. The supervisor's recommendation is to include the basis for the recommendation. All contract modifications shall be subject to the provisions of 200 KAR 5:311.

At any time by a written order and without notice to the sureties, the Commonwealth may make changes within the general scope of the contract. If a change causes an increase or decrease in the cost of, or in the time required for performance of, any part of the work under the contract, an equitable adjustment is to be made in the contract price or delivery schedule, or both, and the contract is to be modified in writing accordingly. Any claim by the contractor for adjustment under this clause is to be asserted by the contractor within 30 days from the date of receipt of notification of changes.

Unless the Commonwealth decides that the facts justify such action, the Commonwealth may receive and act upon any such claim asserted at any time prior to final payment under this contract.

If the value of the property should be less or more as a result of a change included in the contractor's claim for adjustment, the Commonwealth is to have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment may be disputed pursuant to the contract clause entitled "Disputes." However, nothing in this clause is to excuse the contractor from proceeding with the contract as changed.



TERMINATION OF CONTRACTS:

Termination for Default—Any contractor determined in writing by the district to be in breach of any of the terms and conditions of a contract may, at the discretion of the director, be declared in default, and such contract may be terminated as a result of such default.

- Ø A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:
 - Ø Failure to perform the contract according to its terms, conditions, and specifications
 - Ø Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract
 - Ø Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provision of KRS 376 or by letters of indebtedness received from creditors by the district
 - Ø Failure to diligently prosecute the work under a contract for construction services
-
- Ø The Commonwealth shall not be liable for any further payment to a contractor under a contract terminated for the contractor's default after the date of such default as determined by the district except for commodities, supplies, equipment, or services delivered and accepted on or before the date of default and for which payment had not been made as of that date. If a performance or payment bond was required under the contract, the contractor and his or her surety shall be jointly and severally liable to the Commonwealth for all loss, cost, or damage sustained by the Commonwealth as a result of the contractor's default except that a contractor's surety liability shall not exceed the final sum specified in the contractor's bond.

Termination for Convenience—The Commonwealth may terminate for its own convenience all contracts for the procurement of supplies and services if the director has determined that such termination is in the Commonwealth's best interest. If it has been determined that a contract is to be terminated for the convenience of the Commonwealth, the director may negotiate a settlement with the contractor according to terms deemed just and equitable by the director. Compensation to a contractor for lost profits on a contract terminated for convenience of the Commonwealth shall not exceed an amount proportionate to the sum that the contractor's total expected margin of profit on the contract bore to the contract price, based on the total out-of-pocket expense incurred by the contractor as of the date of termination of the contract.



**TERMINATION OF
CONTRACTS****(cont.):**

If a contract is terminated for the convenience of the Commonwealth, the contractor shall have the burden of establishing the amount of compensation to which he or she believes to be entitled by the submission of complete and accurate cost data employed in submitting his or her bid or proposal for the contract and evidence of expenses paid or incurred in performance of the contract from the date of award through the date of termination. Payment of the sum agreed to in settlement of a contract terminated for convenience of the Commonwealth shall be made from the same source of funds or account as the original contract.

**CONTRACT
DISPUTES:**

Except as otherwise provided in the contract, any dispute concerning a question of fact arising under the contract that is not disposed of by agreement shall be decided by the Transportation Cabinet Secretary, or his or her designee, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the Secretary shall be final unless within 30 days from the date of receipt of the decision a written appeal addressed to the Secretary of the Finance and Administration Cabinet is received. The decision of the Secretary of the Finance and Administration Cabinet, or duly authorized representative for the determination of such appeals, shall be final unless fraudulent. Pending final decision of a dispute, the contractor shall proceed diligently with the performance of the contract and in accordance with the state officer's decision.

**CONTRACT
COMPLETION:**

When work has been successfully completed, a final inspection has been made, and the district has accepted the completed work, the district is to notify the contractor in writing that it has accepted the work, is to return the performance bond, and is to request submittal of the TC 31-519 form, *Standard Invoice (Exhibit 16)*.

INVOICES:

Standard invoices are to be prepared by the contractor and transmitted to the right-of-way supervisor in whose district the goods or services are received. One copy is to be marked "Original" unless otherwise specified. Invoices are to include the following information: county name, item number, project number, a description of supplies or services provided, sizes, quantities, unit prices, and extended totals. Any corrections to an invoice are to be made and initialed by the contractor. The invoice is to be signed by the contractor and approved by the right-of-way supervisor.



**TERMS FOR
PAYMENT:**


KRS 45.451 to KRS 45.458 require that all bills shall be paid within 30 working days of either the receipt of a correct invoice or the receipt of goods or services in satisfactory condition. A penalty payment of one percent per month shall be added to the amount due the vendor for each full or partial month that the payment exceeds 30 working days. As an incentive for earlier payment, bidders for state contracts are encouraged to offer discounts for payments made in less than the prescribed 30 days.

**PRECEDENCE OF
PROVISIONS:**

In the event of an inconsistency between provisions of the solicitation, the inconsistency is to be resolved by giving precedence (priority) in the following order:

1. Special conditions
2. Solicitation instructions and conditions
3. General conditions
4. Other provisions of the contract, whether incorporated by reference or otherwise
5. Specifications

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	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>Purpose, Authority, Scope, Policy, & Definitions</p>

PURPOSE: To establish uniform procedures for managing and conducting an inventory of all real property improvements and structures acquired through the right-of-way process and to provide a process for maintenance and removal of all acquired improvements and structures. Property management should be delivered in the most cost-effective and efficient manner for the Cabinet and the citizens of Kentucky.

AUTHORITY: 23 CFR, Section 710—Subpart D—Property Management (**Exhibit 01**); 23 CFR Part 620 B; 49 CFR 18.31

SCOPE: For use by appropriate right-of-way staff of the Central Office and district offices and subagents and consultants.

POLICY: The Division of Right of Way and Utilities shall manage all acquired rights of way and improvements, implement remedial measures to abate hazardous materials located in improvements and soil contamination, and, to the extent practical, remove all improvements from the right-of-way limits prior to releasing the parcels to the roadway contractor. Environmental remediation is a function of the Division of Environmental Analysis and must be conducted by persons licensed to do so.

For guidance relative to air space usage and release of access control, see the Transportation Cabinet's *Permits Guidance Manual*, **PE 1200**.

For guidance relative to disposal of excess right-of-way, see **ROW-1500** of this manual.

DEFINITIONS:

Ø ***Bid packet:***

- ◆ TC 62-42 form, *Bid Invitation* (**Exhibit 27**)
- ◆ KAR 63:005—Open Burning
- ◆ KRS 44.030—Money Not to Be Paid to State Debtor
- ◆ Envelope of sufficient size to contain these items, stamped "SEALED BID" on both front and back; addressed to the district office, including street and room number; and noting the date and time when bids are to be opened

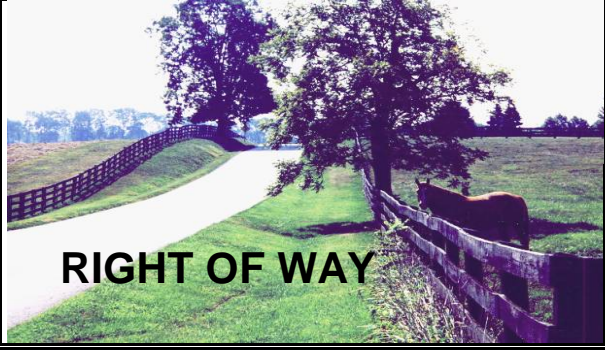


DEFINITIONS (cont.):

- Ø **Improvement:** Real property in the nature of any building or other relatively permanent structures located on or attached to the land
- Ø **Legal possession:** Date the acquisition check is delivered or the date the state obtains right of entry
- Ø **Minus bid:** Bid for which the Cabinet will receive payment if accepted
- Ø **Plus bid:** Bid for which the Cabinet will expend funds if accepted
- Ø **Physical possession:** Date of vacancy or surrender of keys by the former occupant

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	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>General Information</p>

OVERVIEW: The Division of Right of Way and Utilities shall manage all acquired rights of way and, to the extent practical, remove all improvements from the right-of-way limits prior to releasing the parcels to the roadway contractor.

GENERAL INFORMATION: Each district shall designate a Property Management Agent who is responsible for the management and security of acquired improvements. The district shall manage and secure acquired property from the time the Cabinet obtains physical possession of the property until the improvements are removed or a contract is awarded to the roadway contractor.

The Property Management Agent shall:

- Ø Coordinate clearance of improvements from the right-of-way
- Ø Manage rental and rental collection of acquired improvements (with proper credit being given to the appropriate account where applicable)
- Ø Monitor and supervise maintenance of acquired improvements
- Ø Furnish the district review appraiser or first-stage contract review appraiser with salvage values of improvements to be acquired
- Ø Maintain adequate records reflecting the current status of right-of-way clearance, property rental, rental collection, etc., and provide copies to the property management specialist.

In some districts this will be a full-time job and may require assistance from other agents. However, in districts where the number of improvements and property rentals are minimal, the Property Management Agent may be assigned other duties.

The Right-of-Way Supervisor shall closely coordinate with the Negotiator, the Relocation Assistance Agent, and the Property Management Agent to ensure that all records, procedures, and documentation are current, accurate, and complete. The supervisor shall also ensure that agents have performed their respective duties and are fully informed of the status of improvements at all times.



**PROJECT
SUMMARY OF**

IMPROVEMENTS: A *Project Summary of Improvements*, TC 62-201 (**Exhibit 29**) is required on all projects where improvements are acquired. The district shall prepare this form when the project is being set up for right-of-way acquisition. A copy of the summary shall be sent to the Central Office Property Management Specialist at this time to provide a guide as to the number and type of improvements effected by the project.

The district's copy of the summary **shall be kept current** to provide an accurate project status record. Dollar values should be shown on the summary under the "Removal Cost" columns if improvements are retained by owners or removed by bid invitation. Upon completion of improvement removal, a copy shall be forwarded to the Property Management Specialist and a duplicate shall be placed in the district's project file.

When all improvements have been satisfactorily removed or designated for removal by the roadway contractor, a copy of the completed summary shall be submitted to the Property Management Specialist and a duplicate shall be placed in the district's project file.

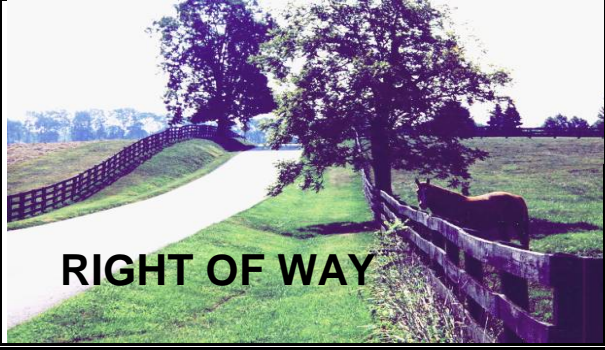
PHOTOGRAPHS: Photographs shall be made of all improvements being acquired, and original photos shall be attached to the TC 62-41 form, *Improvement Removal Contract* (**Exhibit 20**), or the successful bidder's TC 62-42 form, *Bid Invitation for Removal of Improvements* (**Exhibit 28**). In addition, a set of photographs should be kept in the district office files.

DOCUMENTATION: Regardless of how removal is accomplished, the file is to be documented to support the property management agent's original inspection and determination that rodent control is or is not necessary, the method by which improvements have been removed, and the cost thereof.

**RIGHT-OF-WAY
CLEARANCE:**

Before right-of-way can be reported clear, all improvements located within project limits must be removed or approved for removal by the roadway contractor.

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	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>Managing Acquired Improvements</p>

**OBTAINING
TITLE:**

The Cabinet obtains title to an improvement with legal possession of a property, and title remains with the Cabinet until the improvement is removed or a contract is awarded to the roadway contractor. If an improvement is tenant-occupied, the tenant must vacate before the district issues a letter authorizing a property owner to remove an improvement.

**ADVERTISING
FOR REMOVAL:**

An improvement cannot be advertised for removal until the Cabinet has legal possession of the property and the occupants have vacated or have given written permission for its advertisement.

**MAINTAINING
EXISTING
SERVICES:**

Existing public convenience services and health and safety conditions for individuals or families in the immediate vicinity are to be maintained to the maximum extent possible.

**DISCONNECTING
UTILITIES:**

Utility service is to be discontinued to all acquired improvements after the Cabinet is given possession of the property. The date of possession is when payment is made for the property or when the improvements are vacated, whichever date is later. The property management agent is to advise each utility company in writing that the Cabinet owns the property and request that service be discontinued and the meter removed. Should any utility serve other improvements that were not acquired by the Cabinet, the agent is to make arrangements with the previous owner to have service provided to the remaining improvements at no cost to the Cabinet.

All utilities to acquired improvements are to be disconnected and the meters removed before issuing a work order for building removal.



**PROJECT
SECURITY:**

The Property Management Agent is responsible for the preservation of the improvements and for reasonable safety measures when KYTC has acquired ownership and possession of the property. Acquired right-of-way must be maintained in a manner that will prevent, minimize, or correct problems such as illegal dumping or disposal of rubble, debris, etc., on cleared right-of-way until needed for construction.


**DETERMINING
FINAL
DISPOSITION:**

The Division of Right of Way and Utilities is to determine final disposition of improvements by permitting the owner to retain the improvement, permitting another displaced person to remove it from the right-of-way and use the improvement for replacement housing, or effecting removal by invitation for bids or by the roadway contractor. On occasion the director of Right of Way and Utilities or the district supervisor may permit the owner to retain some of the improvements as part of an administrative settlement in negotiating the parcel. This must be supported in writing.

MINOR REPAIRS:

Minor repairs that prove economically feasible may be made when approved by the district right-of-way supervisor. Generally, only minor repairs to a rented improvement are justified. Documentation in the form of receipted bills is required in the parcel file.

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	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>Hazardous Materials</p>

OVERVIEW:

Explained and described are the policy and procedures for the management of property containing hazardous materials. Hazardous materials on roadway projects are normally identified during the environmental study for the project, as this contributes to "location" considerations. The responsibility for identification is with DEA. Property management coordinates with DEA contractors during the acquisition stage for the removal of these materials.

Asbestos is the only hazardous material for which property management is directly responsible for contraction and removal.

**INSPECTING
PROPERTY:**

Upon authorization to proceed with acquisitions, the property management agent is to inspect all property to be acquired: to determine whether any parcel contains hazardous materials or USTs. Should signs of hazardous materials or USTs be observed, the right-of-way supervisor shall make a written request to the district's Environmental Coordinator to have a Site 1 Environmental Investigation conducted on the parcel.

- Ø Prepare an inventory of structures to be removed.
- Ø Coordinate with DEA for the advancement of environmental remediation, including asbestos abatement.

Note: All other environmental remediation is to be done by DEA, including UST removal.

- Ø Prepare summary.
- Ø Make sure all improvements are clear of inhabitants and photograph them.
- Ø When potential environmental contaminates are identified that were not addressed in the original approved environmental impact study, notify DEA immediately and let them initiate a site 1 environmental investigation.

The Cabinet may require owners to perform required clean-up procedures prior to purchasing property at its approved appraised value. The Division of Environmental Analysis and the right-of-way director or the property management specialist is to advise the district of the procedure to follow in such cases.



**REMOVAL BY
OWNER:**

When buildings are to be retained by a property owner, the owner is to be advised of the possible existence of hazardous materials and the requirement for compliance with local, state, and federal regulations regarding removal. The property management agent is to encourage owners to contact the local Department for Environmental Protection office to review such regulations and requirements prior to making a decision to retain improvements. **(See ROW-1207-3).**

**REMOVAL BY
CONTRACTOR:**

When improvements are to be removed by a contractor, the Cabinet (DEA) is responsible for removal of all hazardous materials from buildings prior to demolition by the contractor. Asbestos-containing material (ACM) is to be identified by the Cabinet's property management agent before the parcel is released to be contracted for demolition, pursuant to **ROW-1205**, "Inspection and Abatement of Asbestos-Containing Materials."

Should other hazardous materials be found, the property management agent is to contact DEA before proceeding to ensure proper removal and disposal of any hazardous materials.

Prospective contractors are to be advised that all known hazardous materials have been removed. If unknown hazardous materials or any other contaminant is discovered during removal activities, the contractor must immediately stop work and notify the Cabinet. No additional removal activities may be performed on the improvements until the Cabinet provides written authorization to proceed.

**DIVISION OF
ENVIRONMENTAL
ANALYSIS:**

The Cabinet is to inspect all acquired improvements, other than those retained by the owner, for the presence of ACM. The Division of Environmental Analysis is responsible for ACM inspection and abatement activities.

ACM inspections may be performed any time with the permission of the property owner and the occupant(s). However, abatement normally cannot be performed until the Cabinet obtains physical possession of a property.

When improvements are to be removed by the roadway contractor, any ACM is to be removed prior to release of the improvements to the roadway contractor. The roadway contractor is not to perform inspection and abatement activities.

**REQUEST FOR
ACM INSPECTION
& ABATEMENT:**

The district right-of-way supervisor is to request ACM inspection and abatement by memorandum to the Director of the Division of Environmental Analysis, with a copy to the property management specialist. ACM inspection and abatement requests are to include the following information:



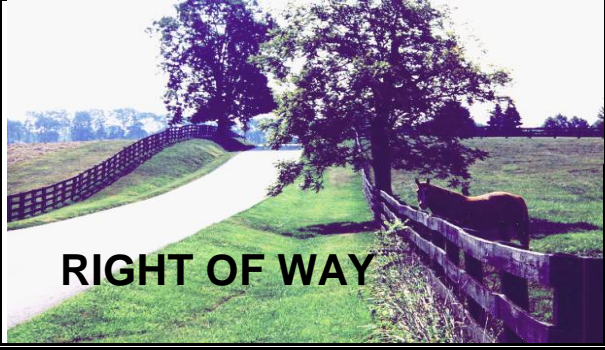
**REQUEST FOR
ACM INSPECTION
& ABATEMENT
(cont.):**

- Ø Project data including county name, item number, state and federal project numbers, and parcel number(s)
- Ø Statement indicating whether the request is for both inspection and abatement or for inspection only
- Ø Parcel data including parcel number, owner's name, property address, a description (including size) of each building or miscellaneous item to be inspected, the date the parcel was acquired (for inspection requests) and/or vacated (for abatement requests), and an anticipated vacancy date if the parcel has not been acquired or vacated
- Ø Date each parcel may be inspected and the name and phone number of the person to contact to obtain keys to the buildings and to advise when the work is to be performed
- Ø Request that the DEP 7036 form, *Notification of Asbestos Abatement/Demolition/Renovation* (**Exhibit 30**), be prepared for all parcels and submitted to the Natural Resources Cabinet's Division for Air Quality 10 days prior to removal and that a copy be sent to the district to use with the TC 62-41 form, *Improvement Removal Contract* (**Exhibit 20**)
- Ø Two sets of current right-of-way plan sheets identifying the location of each building or item to be inspected

Once the initial memorandum and plan sheets have been submitted to the Division of Environmental Analysis, subsequent requests for inspections or abatement on the project may be submitted by e-mail.

Copies of all memoranda and e-mails are to be submitted to the property management specialist and to the district environmental coordinator.

2 2 2

	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>Rodent Control</p>

**NEED FOR
RODENT CONTROL
MEASURES:**

On all projects involving acquisition of improvements, the property management agent is to determine the need for rodent control measures and the extent of such need (i.e., for an entire project, for certain parcels, or for a portion of a parcel). .

Rodent control measures are to be taken on improvements located within the right-of-way and those situated elsewhere that cause an infestation problem.

If rodent control is necessary, measures to remedy the situation are to be taken, to the extent possible, prior to removal of improvements. When appropriate, the district may make rodent control part of an improvement removal contract.

**CONTROL BY
IMPROVEMENT
REMOVAL
CONTRACTOR:**

When rodent control is part of an improvement removal contract, the contractor is to subcontract with a licensed exterminator, the cost for which is to be included in the contractor's bid. The improvement removal contractor is to take measures to control rodents prior to removal of improvements. The contractor is to be allowed 10 days between the award date and the work order date to have this work completed. A paid receipt from the licensed exterminating company performing the work must document satisfactory completion of rodent control measures.

**CONTROL PRIOR
TO IMPROVEMENT
REMOVAL
CONTRACT:**

When rodent control measures are needed prior to award of an improvement removal contract, the property management agent is to coordinate with the state, county, or city health department to provide the needed services. Such agencies are to be requested to carry out their usual procedures for elimination of rodents if they have effective procedures for this purpose.



**CONTROL PRIOR
TO IMPROVEMENT
REMOVAL****CONTRACT (cont.):**

If local agencies are unable to provide needed services, the district may obtain bids from licensed exterminators and contract for rodent extermination. The district is to maintain records regarding the methods used to select a licensed exterminator and the fee to be paid for rodent control.

Work is to comply with state and local laws and regulations whether performed by local agencies, contract exterminators, or removal contractors.

DOCUMENTATION:

Regardless of how the work is accomplished, the file is to be documented to support the property management agent's original inspection and determination that rodent control is or is not necessary, the method by which contractors have been obtained, and the cost thereof.

Copies of the original inspection report and any follow-up rodent control activity are to be furnished to the property management specialist.

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	<p><i>Section</i></p> <p>REMOVAL OF IMPROVEMENTS</p>
	<p><i>Subject</i></p> <p>Performance Bond Requirements</p>

**PERFORMANCE
BOND:**

A performance bond is required to ensure proper removal of improvements within the specified time. The district right-of-way supervisor and property management agent are to establish bond requirements before initiation of negotiations. Salvage values are not to be considered when establishing the amount of bonds.

In no instance is a performance bond to be less than it would cost the Cabinet to have the improvement removed should the improvement be stripped of all salvageable material and abandoned.


**CONDITION
UPON REMOVAL:**

Removal is to be complete, and land is to be left in a shovel-clean condition. Basements, cisterns, septic tanks, or other safety hazards are to be made safe by proper back filling or appropriate remedies. Water and monitoring wells are to be temporarily covered. All work is to be in accordance with the TC 62-42 form, *Bid Invitation for Removal of Improvements (Exhibit 28)*.

**FORFEITURE
OF BOND:**

If land is not shovel-clean within the specified time, the performance bond is to be forfeited, and the Cabinet may remove improvements. The district right-of-way supervisor is to be responsible for granting any extensions of time due to extenuating circumstances.

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	<p><i>Section</i></p> <p>REMOVAL OF IMPROVEMENTS</p>
	<p><i>Subject</i></p> <p>Inspection</p>

**PERIODIC
INSPECTION:**

The property management agent is to periodically inspect removal activities performed by owners or contractors employed through sealed bid or public auction. The agent is to make an adequate number of inspections to ensure timely removal and compliance with specifications.

**DOCUMENTING
INSPECTIONS:**

The property management agent is to maintain a written record of all inspections, including the following in each entry:

- Ø Date and time of inspection
- Ø Ground conditions at the site
- Ø Removal activities being performed at the time of inspection
- Ø Description of the progress being made toward removing the improvement

When a parcel is cleared and the district accepts the site preparation, a photograph of the cleared site is to be taken and made a part of the record of inspections. A copy of the inspection report is to be placed in the district file, and a copy is to be forwarded to the property management specialist in Central Office

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	<p>Section</p> <p>REMOVAL OF IMPROVEMENTS</p>
	<p>Subject</p> <p>Owner Retention & Removal of Improvements</p>

POLICY:

During negotiations, owners may be given the opportunity to retain and remove improvements for their salvage value. If negotiations are successful and owners elect to retain improvements, their salvage value is to be deducted from their right-of-way payments. The TC 62-41 form, *Improvement Removal Contract* (**Exhibit 20**), outlining terms and conditions of the removal, is to be executed. This option should be pre determined by the department as a viable and safe action.

Any agreement between owners and the negotiator is to be reflected in the TC 62-83A form, *Memorandum of Understanding* (**Exhibit 18**), and the TC 62-77 form, *Record of Contacts* (**Exhibit 15**). The owners are also to execute the TC 62-41 form, *Improvement Removal Contract* (**Exhibit 20**), outlining terms and conditions of the removal.

Title to an improvement passes to the Cabinet with legal possession of the property and remains with the Cabinet until the improvement is removed. If an improvement is tenant-occupied, the tenant is to be given ample time to relocate and must actually vacate before the district issues a letter authorizing a property owner to remove an improvement.

When payment for right-of-way is delivered, property owners are to be reminded of the time period for removal of improvements and the exact date upon which that time period begins. During the establishment of building removal deadlines, consideration is to be given to the 90-day notice expiration date.

The district is to discontinue utility service to all acquired improvements when payment is made for the property or when the improvement is vacated, whichever is later.

Owners may begin removal of an improvement upon receipt of a letter from the district authorizing its removal.

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	Section REMOVAL OF IMPROVEMENTS
	Subject Removal of Improvements Process

POLICY: If an owner does not retain an improvement and it is not needed as replacement housing for another displacee, the district is to remove improvements pursuant to procedures outlined in **ROW-1100**, "Sealed Bids & Public Auctions."

BID PACKET REQUIREMENTS:

The district is to prepare bid packets as project conditions dictate. Before distributing bid packets to prospective bidders, the property management agent is to assemble and submit a proposed bid packet to the property management specialist. The district file is to contain a copy of the proposed bid packet, which is to include the following:

- Ø TC 62-42 form, *Bid Invitation for Removal of Improvements* (**Exhibit 28**)
- Ø Envelope stamped "SEALED BID" on both the front and the back, with the district's address (including street and room number) and the date and time when bids are to be opened
- Ø Envelope of sufficient size to contain the above-required information and marked "BID PACKET" on the front

Upon Central Office review and approval, The Division of Purchases is to solicit bids pursuant to procedures outlined in **ROW-1100**, "Sealed Bids & Public Auctions." Prospective bidders are to be instructed to complete the *Bid Invitation* in its entirety, to comply with all bid submission requirements, and that any omission may disqualify their bid. They are to be advised that a proposal guarantee, as outlined in the *Bid Invitation*, is to accompany all bids submitted. This proposal guarantee is required to cover administrative costs to re-advertise and reprocess the *Bid Invitation* should the successful bidder fail to execute a contract.

The district prepares the bid packet for distribution to prospective bidders by the Division of Purchases in such a manner as project conditions dictate.



**BID PACKET
REQUIREMENTS
(cont.):**

Prospective bidders must be informed that removal of any improvement from the right-of-way shall be in accordance with the bid packet that shall include the following.

- Ø *Bid Invitation for Removal of Improvements*, TC 62-42 (**Exhibit 28**)
- Ø An envelope stamped “SEALED BID” on both the front and back, with the district’s address and the date and time when bids are to be opened
- Ø An envelope of sufficient size to contain the above-required information and which is marked BID PACKET on the front
- Ø Improvement photos
- Ø Maps and directions

Prospective bidders shall be instructed to fill out the form completely and to comply with all bid submission requirements, and be advised that any omission may disqualify their bid. They shall be advised that a proposal guarantee (as outlined in the *Bid Invitation*) must accompany all bids submitted. This proposal guarantee is required to cover administrative costs for re-advertising and reprocessing the bid invitation in the event the successful bidder fails to execute a contract.

**NOTIFICATION
TO CENTRAL
OFFICE:**

The district shall notify the property management specialist in Central Office when a parcel is ready to be bid. The notice shall include the following information:

- Ø A copy of the district’s prospective bidder list
- Ø A complete bid packet

**NOTICE TO
BIDDERS:**

The Division of Purchases will provide written notice to all bidders promptly after the Division of Right of Way accepts a bid. The successful bidder’s notice will advise that attendance of a pre-authorization meeting is mandatory, and the following items are to be received by Purchases before a work order will be issued:

- Ø Payment of amount due to the state, when applicable
- Ø Performance bond
- Ø Certificate of insurance
- Ø Copy of the completed DEP 7036 form, *Notification of Asbestos Abatement/Demolition/Renovation* (**Exhibit 30**)
- Ø Proof of rodent control completion, when applicable



NOTICE TO**BIDDERS (cont.):**

A copy of the *Bid Invitation* and a copy of a partially completed *Notification of Asbestos Abatement/Demolition/Renovation* are to be attached to the successful bidder's notice.

Proposal guarantees from unsuccessful bidders are to be returned with their notices.

**ISSUANCE OF
WORK ORDER:**

Prior to issuing a work order the property management agent and, when available, the district environmental coordinator are to meet with the successful bidder to:

- Ø Review the improvements and items to be removed
- Ø Notify the Environmental & Public Protection Cabinet (EPPC), Division of Air Quality, 10 days prior to issuance
- Ø Provide the contractor with a set of plans for all parcels included in the contract
- Ø Advise the contractor to obtain the TC 95-19 form, *Kentucky Overweight/Overdimension Permit (Exhibit 32)*, from the Transportation Cabinet's Division of Motor Carriers before moving an improvement on or across any highway or structure maintained by the Cabinet
- Ø Review portions of the TC 62-42 form, *Bid Invitation for Removal of Improvement (Exhibit 28)*, covering disposal of materials, recovery of refrigerant, open burning, cesspool and cistern removal, basement floor and basement and foundation wall removal, and security of drilled or dug water wells and monitoring wells
- Ø Have all meeting attendees sign the TC 62-17 form, *Pre-Improvement Removal Meeting Certification (Exhibit 33)*

After the pre-authorization meeting has been held, the district is to issue a written work order if it has received all items listed in **NOTICE TO BIDDERS** (above). Upon issuance, a copy of the work order and a signed *Pre-Improvement Removal Meeting Certification* are to be provided to the property management specialist.

**HAZARDOUS
MATERIALS:**

Should unknown hazardous materials or any other contaminants be discovered during removal activities, the contractor must immediately stop work and notify the Cabinet. No additional removal activities may be performed on such improvements until the Cabinet provides written authorization to proceed.

When a removal contractor notifies the district of the discovery of hazardous materials or any other contaminants, the right-of-way supervisor is to immediately request inspection and abatement by the Division of Environmental Analysis pursuant to **ROW-1204**, "Hazardous Materials."



**CONTRACT
COMPLETION:**

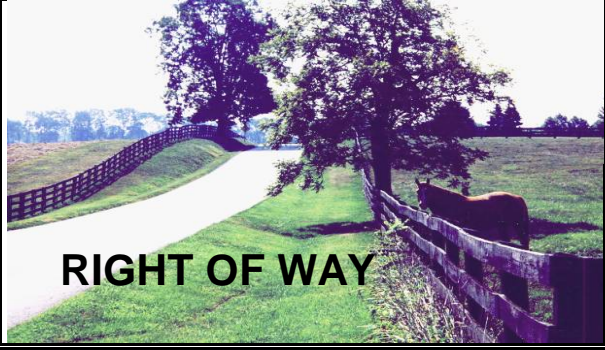
When the contractor has successfully completed all work and the property management agent has conducted a final inspection, the district is to notify the contractor, in writing, that the work has been accepted. The notice is to include the contractor's performance bond and, when applicable, is to request submittal of the TC 31-519 form, *Standard Invoice* (**Exhibit 16**).

**PAYMENT TO
CONTRACTOR:**

The contractor is to prepare, sign, and submit an acceptable *Standard Invoice* for payment. When the right-of-way supervisor has approved an invoice, the district is to request payment through remote data entry and submit to the property management specialist a copy of the invoice and the following:

- Ø Copy of the notice specified in **Contract Completion**, above
- Ø Copy of the DEP 7036 form, *Notification of Asbestos Abatement/Demolition/ Renovation* (**Exhibit 30**), submitted to the Kentucky Division for Air Quality (*Asbestos Demolition & Renovation Notification* form for parcels in Jefferson County)
- Ø Copies of all disposal receipts for the contract
- Ø Copy of the property management agent's record of inspections with photographs of the cleared site(s)
- Ø An updated copy of the TC 62-201 form, *Project Summary of Improvements* (**Exhibit 29**), for the project on which the parcels are located

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	<p><i>Chapter</i></p> <p>PROPERTY MANAGEMENT</p>
	<p><i>Subject</i></p> <p>Rental of Improvements</p>

OVERVIEW: Generally, improvements are removed as soon as practical after right-of-way is obtained. However, if occupants wish to remain beyond the Cabinet's date of possession and if the property is not needed for construction purposes for an extended time, improvements may be rented on the basis of a month-to-month agreement.

FEASIBILITY OF RENTING: The district right-of-way supervisor is to consider the following factors to determine the feasibility of renting an improvement:

- Ø Nearness of the project's clearance date, or the parcel's need for utility relocation
- Ø Cost to maintain the improvement in a decent, safe, and sanitary condition versus its potential rental income
- Ø Benefits to be derived versus management costs
- Ø Availability of desirable tenants
- Ø Need for temporary replacement housing
- Ø Its potential to be sold if sold immediately in its present condition

PROPERTY RENTAL OR VACATION: When an improvement is rented, the property management agent is to promptly forward copies of the TC 62-26 form, *Rental Agreement (Exhibit 21)*, and the TC 62-84 form, *Rental Record (Exhibit 34)*, to the property management specialist. When an improvement is vacated, the agent is to promptly send a completed copy of the *Rental Record* to the Central Office.

TENANT OCCUPANTS: When the Cabinet obtains possession of a property, tenants are to immediately begin paying rent to the Cabinet. The district is to advise both owners and tenants that rent payments are to be made to the Cabinet from that time forward.



OWNER**OCCUPANTS:**

The date by which an owner is to vacate the property and, if applicable, the date the owner is to begin paying rent are to be reflected in the TC 62-83A form, *Memorandum of Understanding* (**Exhibit 18**), and the TC 62-77 form, *Record of Contacts* (**Exhibit 15**). Copies of the *Memorandum of Understanding* and *Record of Contacts* are to be provided to the property management agent.

Owners are given 30 days rent-free to vacate an improvement after the Cabinet obtains legal possession. The district right-of-way supervisor may allow an owner a longer period of time if it is in the Cabinet's best interest and if sufficient time remains before the project's scheduled clearance date. As part of the consideration for the owner's property, the supervisor may give the owner up to 60 additional rent-free days to vacate (a total of 90 rent-free days).

RENTAL**AGREEMENTS:**

All *Rental Agreements* contain a 30-day termination clause to assure the improvement will be vacant when its removal is necessary. Each rental is executed on a *Rental Agreement* and recorded on a *Rental Record*. The property management agent is to retain signed copies of these documents in the parcel file and promptly forward copies to the property management specialist. The lease agreement with these persons should include a provision acknowledging that the occupancy does not create an entitlement to relocation assistance upon termination of the occupancy.

An owner is to execute a *Rental Agreement* if the owner expects to vacate after the rent-free period expires (see **OWNER OCCUPANTS**, above). The agreement is to be executed when the owner is paid for the property, with rent beginning when the rent-free period ends (a maximum of 90 days).

A *Rental Agreement* is to be executed with tenants when the Cabinet obtains possession of a property, with rent immediately being payable to the Cabinet. If the owner of the property has been paid and the tenant has not had an RHP offer made, then the 90-day notice starts on the day of the RHP offer.

RENTAL**RATES:**

Rental rates are fixed at economic rent as determined by a district appraiser or replacement housing evaluator. The district right-of-way supervisor may accept a lesser amount if an improvement cannot be rented for economic rent and there is a need to prevent a situation attractive to vandalism. If a lesser amount is accepted, the parcel file is to contain documentation as to why. Normally for a tenant occupant the rental rate will remain the same as the tenant was paying when the property was acquired.



**RENT
COLLECTION &
DISPOSITION:**

Rent payments are due on the first day of each month and are to be in the form of a certified check, a cashier's check, or a money order made payable to the Transportation Cabinet. *Cash or personal checks are not to be accepted.* The property management agent is to promptly forward rent checks to the property management specialist for prompt submittal to the Division of Accounts. If the project has federal funds in the right-of-way phase, the federal share of the proceeds is credited to projects eligible under Title 23 of the United States Code. The state share is credited to the appropriate account.


The property management agent is to maintain current and accurate rent receipt records for each parcel on the *Rental Record*.

**DELINQUENT
RENT:**

When rent payments are delinquent 30 days or more, the right-of-way supervisor may request the district attorney to prepare an eviction notice. Usually, the amount of money involved will not justify court procedures for collection of delinquent rent. The chief district engineer, the district attorney, and the supervisor are to determine when court action is justified.

The improvement may be advertised for removal unless needed as replacement housing.

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	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>Purpose, Authority, & Policy</p>

PURPOSE: To establish uniform procedures for the relocation of human remains when such remains must be moved from right-of-way acquired for a Transportation Cabinet project

AUTHORITY: 600 KAR 3:020 and 901 KAR 5:090

POLICY: The Division of Right of Way and Utilities shall coordinate with the Division of Environmental Analysis to ensure that the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) and of the National Historic Preservation Act (NHPA) are carried out and that historically significant cemeteries are appropriately handled. The Division of Right of Way and Utilities is to ensure, to the extent practical, that all human remains are removed from the right-of-way limits prior to releasing the parcels to the roadway contractor.

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	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>General Information</p>

POLICY: The district right-of-way supervisor is to designate an experienced and capable agent to coordinate relocation of human remains. The grave relocation agent is to acquire a thorough understanding of all policies and procedures to ensure contractors comply with state, county, and local health laws and the terms and conditions of the contract.

When physically possible, the district is to consider relocating remains to the remainder of the disinterment cemetery. If the disinterment cemetery remainder will be landlocked or too small, remains are to be relocated to a perpetually maintained public cemetery unless the next of kin prefers another location. When the next of kin wants remains relocated to another location, any additional cost is to be borne by the next of kin.

To the extent possible under these procedures, the division is to attempt to honor reasonable requests of the next of kin. Any request to deviate from these procedures is to be justified by the district right-of-way supervisor and approved by the Director of the Division of Right of Way and Utilities.

DISTRICT RESPONSIBILITIES: The district is responsible for coordinating the relocation of all human remains and other contents of the grave pursuant to these procedures. The grave relocation agent is to perform grave relocation activities in a timely manner to ensure clearance of the construction project. The agent is to maintain accurate and well-organized records reflecting the current status of all grave relocation activities. Unless otherwise noted, original documents are to be maintained in the district grave relocation project file, with copies provided to the Relocation Branch Manager.

INADVERTENT DISCOVERY OF HUMAN REMAINS: If human remains are inadvertently discovered, the district is to follow this procedure:

1. Immediately stop work in the area.
2. Advise the person who discovered the remains to:



**INADVERTENT
DISCOVERY OF
HUMAN REMAINS
(cont.):**

- a) Immediately notify the coroner or deputy coroner, and a law enforcement agency (pursuant to KRS 72.020)
 - b) Take immediate steps to secure and protect the remains, including, as appropriate, stabilization or covering of the remains
3. Document pertinent information as to the kinds of human remains inadvertently discovered, their conditions, and the circumstances of their inadvertent discovery
 4. Promptly provide the district environmental coordinator with written notice of the information contained in Step 3, and provide a copy of the notice to the Relocation Branch Manager. The district environmental coordinator is to ensure that the provisions of the Native American Graves Protection and Repatriation Act and of the National Historic Preservation Act are carried out.

The activity that resulted in the inadvertent discovery may not resume until written notice to proceed is received from the Division of Environmental Analysis.

**CENTRAL OFFICE
RESPONSIBILITIES:**

The Central Office is to review bid invitation submittals, secure disinterment and reinterment permits, submit final reinterment plats to the Office of the Registrar of Vital Statistics, and provide technical assistance to the districts.

**FUNERAL
DIRECTOR'S
CONTRACT:**

When the division is authorized to relocate remains, they are to be removed by a licensed funeral director contracted by the Commonwealth. A funeral director's contract is to include all work associated with the grave relocation project, other than work that a reinterment cemetery may require its staff to perform. Work included in a funeral director's contract may include but not be limited to:

- Ø Disinterment and reinterment of all human remains and all other contents of the grave
- Ø Provision of reinterment containers and grave liners as required by the reinterment cemetery
- Ø Relocation and resetting of all gravestones, markers, and monuments from their present locations to their new locations
- Ø Furnishing and setting of new grave markers



**FUNERAL
DIRECTOR'S
CONTRACT
(cont.):**

- Ø Reasonable restoration of disturbed areas including the refilling of all disinterred graves and seeding or placing sod on all areas disturbed during the grave relocation process
- Ø Provision for access to the reinterment cemetery

**GRAVE DATA
SHEET:**

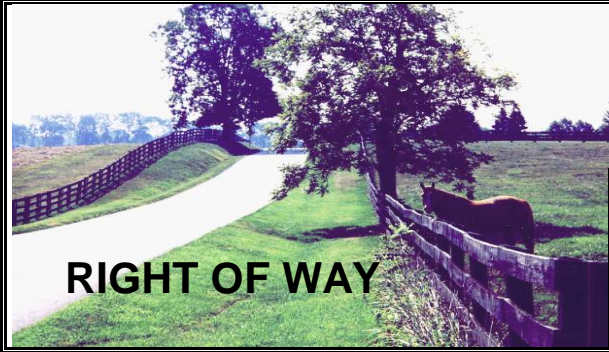
Promptly after right-of-way acquisition is authorized, the grave relocation agent is to complete the TC 62-52 form, *Grave Data Sheet (Exhibit 35)*, listing all human remains and monuments to be relocated. The *Grave Data Sheet* is to be kept current by updating data as remains are relocated. The district is to retain this form in the district grave relocation project file and provide copies to the Relocation Branch Manager (see “Central Office Review of Bid Packet” in **ROW-1304-2** and “Contract Completion & Payment” in **ROW-1304-5**).

PHOTOGRAPHS:

The grave relocation agent is to take photographs of the disinterment cemetery, with emphasis being placed on the portion to be relocated. The agent is to take the photographs early in the acquisition process and keep them in the district grave relocation project file. The agent is to take photographs of each monument to be relocated to adequately document its condition prior to relocation and is to take photographs of anything else that may become controversial.

The agent is to take photographs as the funeral director is working and is to photograph monuments after the funeral director has set them in the reinterment cemetery. These photographs are to be kept in the district grave relocation project file.

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**Chapter**

RELOCATION OF HUMAN REMAINS

Subject

Preparing to Relocate Human Remains

**ENVIRONMENTAL
ASSESSMENT:**

Upon authorization to proceed with acquisitions, the district right-of-way supervisor is to confirm that the Division of Environmental Analysis has assessed all affected cemeteries for their historical significance and the presence of Native American graves.

If an assessment has been completed, the supervisor will provide a copy of the assessment results along with the following information to the Relocation Branch Manager. If no assessment has been completed, the supervisor is to provide the following information with a request for assessment to the district environmental coordinator, with copies to the Relocation Branch Manager:

- Ø Number of cemeteries within the right-of-way limits
- Ø Location of each cemetery affected by the project
- Ø Number of graves affected in each cemetery
- Ø Description of each cemetery and how it is affected by the project
- Ø Plat of the disinterment cemetery showing an accurate location, boundary (by distance and bearings) of the entire cemetery, the way the proposed right-of-way will affect the cemetery, the graves to be relocated, each grave number, and the name of the remains in each grave, when known. When the remains are unknown, the plat is to designate the remains as "Unknown." The Division of Highway Design is to provide the plat in accordance with the *Highway Design Guidance Manual*.
- Ø General information such as the owner of the property and the owner of the cemetery, the owners' relationship to those interred, a statement indicating whether it will be possible to relocate remains to the remainder of the disinterment cemetery, the name and location of the nearest perpetually maintained public cemetery, and any other pertinent information
- Ø The grave relocation agent's estimate of cost for the grave relocation project, prepared as outlined in "Identifying Reinterment Cemetery" (below).



**ENVIRONMENTAL
ASSESSMENT
(cont.):**

The Division of Environmental Analysis is to assess each affected cemetery to determine the historical significance of the cemetery and the remains interred therein. Following assessment, Environmental Analysis is to advise the district of the method by which remains are to be removed. The district is to retain assessment results and any subsequent directives from Environmental Analysis in the district's grave relocation project file and is to provide copies to the Relocation Branch Manager.

Environmental Analysis may contract with an archaeologist to relocate remains or may authorize the Division of Right of Way and Utilities to relocate remains. When the division is authorized to relocate remains, a funeral director licensed by the Commonwealth is to remove them.

**IDENTIFYING
REINTERMENT
CEMETERY:**

When physically possible, the district is to consider relocating remains to the remainder of the disinterment cemetery. If the disinterment cemetery remainder is landlocked, too small, or not desired by the next of kin, the remains, when economically feasible, are to be relocated to the nearest perpetually maintained public cemetery. If the next of kin wish to relocate remains to another location, any additional cost associated with a location other than the nearest perpetually maintained public cemetery is to be borne by the next of kin.

The grave relocation agent is to contact the nearest perpetually maintained public cemetery to determine the cost of reinterment sites, the cost to set monuments, and the type(s), if any, of reinterment containers and monuments that may be required. The agent is to document whether the Cabinet's contract funeral director will be permitted to perform work in the reinterment cemetery.

The grave relocation agent is to use information gathered from the reinterment cemetery and information on the TC 62-52 form, *Grave Data Sheet (Exhibit 35)*, to estimate the total cost of the grave relocation project. The agent's total project cost estimate is to provide a breakdown of the costs attributable to the funeral director's contract and those associated with the reinterment cemetery. The cost breakdown is to include unit costs, extended costs, and total costs. (See "Funeral Director's Contract" in **ROW-1302** for costs attributable to the funeral director's contract.)

PUBLIC NOTICE:

Upon determining the presence of unknown remains, or remains where the next of kin cannot be located, the grave relocation agent is to place a public notice in all local newspapers that are published at least weekly. The notice is to advise of the Cabinet's intent to relocate a number of graves on the designated project. If an extremely large number of graves is being disinterred, the advertisement is to be run in the major newspaper serving the area where the graves are located.



PUBLIC NOTICE

(cont.):

The notice is to be published once a week for 60 days and include the following:

- Ø Project's identification—county, item number, project number, and facility's common name
- Ø Name and location of the cemetery to be relocated
- Ø Request for assistance from anyone having knowledge of the cemetery, of any persons buried in the cemetery, or of their next of kin
- Ø Name of the grave relocation agent to contact
- Ø Mailing address and telephone number of the district office

When unidentified remains are to be relocated and after the 60-day notice has expired, the grave relocation agent is to submit an affidavit and resolution to the county fiscal court for authorization to relocate the graves.

The district is to retain copies of public notices, the agent's affidavit, and the fiscal court authorization in the district grave relocation project file and, pursuant to **ROW-1304-2**, "Central Office Review of Bid Packet," is to provide copies to the Relocation Branch Manager when submitting a proposed bid packet.

**CONTACTING
NEXT OF KIN:**

The grave relocation agent is to make every effort to contact next of kin early in the acquisition process. Personal contact is to be made with the next of kin to fully explain grave relocation procedures, to answer any questions they may have, and to obtain authorization to disinter and reinter remains. Authorization is to be obtained from all members of the nearest class of next of kin and is effected by execution of the TC 62-55 form, *Consent & Authorization (Exhibit 36)*.

The district is to retain the original TC 62-55 form in the district grave relocation project file and, pursuant to **ROW-1304-2**, "Central Office Review of Bid Packet," is to forward copies to the Relocation Branch Manager when submitting a proposed bid packet.

If there are unidentified remains or if next of kin cannot be located, the district is to publish its intention to relocate graves as outlined in "Public Notice" in this chapter. If the next of kin cannot be located after these efforts, the district is to request authorization from the county fiscal court to relocate the remains.

**RESERVED
SPACES:**

If a living spouse has a reserved space adjoining the deceased in the disinterment cemetery and requests a reserved space adjoining the deceased in the reinterment cemetery, this space is to be provided. A reserved space in the reinterment cemetery is provided in lieu of any payment to the spouse for the reserved space in the disinterment cemetery. Consideration is to be given to reasonable requests for additional reserved spaces based on the facts in each situation. Requests for additional reserved spaces are to be justified by the district right-of-way supervisor and approved by the Director of the Division of Right of Way and Utilities.



**RIGHT OF ENTRY—
DISINTERMENT****SITE:**

The grave relocation agent is to obtain a release from the owner of the property for the Cabinet and its contractor to enter upon said property to remove remains and monuments. To affect release, the owner is to execute the TC 62-65 form, *Consent & Release (Exhibit 38)*, unless a deed has been executed or right of entry has been obtained.

The district is to retain the original TC 62-65 forms and copies of executed deeds or right-of-entry agreements in the district grave relocation project file and, pursuant to **ROW-1304-2**, "Central Office Review of Bid Packet," is to forward copies to the Relocation Branch Manager when submitting a proposed bid packet.

**RIGHT OF ENTRY—
REINTERMENT****SITE:**

The grave relocation agent is to obtain a release from the reinterment cemetery for the Cabinet and its contractor to enter upon said property to reinter remains and set monuments. To effect release, the owner is to execute the TC 62-64 form, *Reinterment Agreement (Exhibit 37)*, whether reinterment will be in a public cemetery or on private property.

The district is to retain the original TC 62-64 forms in the district grave relocation project file and, pursuant to **ROW-1304-2**, "Central Office Review of Bid Packet," is to forward copies to the Relocation Branch Manager when submitting a proposed bid packet.

2 2 2

	Section BID INVITATION PROCEDURES
	Subject Bid Packets


**PREPARING A
BID PACKET:**

The grave relocation agent prepares bid packets as project conditions dictate. A bid packet is to include but may not be limited to the following:

- Ø TC 62-42 form, *Bid Invitation for Removal of Improvement* (**Exhibit 28**)
- Ø TC 62-52 form, *Grave Data Sheet* (**Exhibit 35**)
- Ø Specifications and special provisions for relocation of human remains
- Ø **Exhibit 1** (Reinterment Container) and **Exhibit 2** (Monument—Size, Setting, and Lettering)
- Ø Envelope stamped “SEALED BID” on both front and back, with the district’s address, including street and room, and the date and time when bids are to be opened
- Ø Envelope of sufficient size to contain the above-required information and that is marked “BID PACKET” on the front

Full bid packet must be submitted to Central Office Right of Way for review and shall be forwarded to the Division of Purchases for final bidding and contracting.

2 2 2

	Section BID INVITATION PROCEDURES
	Subject Central Office Review of Bid Packet

**REVIEW
PROCEDURES:**

The grave relocation agent is to submit a proposed bid packet to the Relocation Branch Manager, along with the following additional documents. The district grave relocation project files are to contain a copy of the proposed bid packet and the following documents:

- Ø Memorandum fully describing the situation and the district's recommendation for relocation of remains
- Ø When applicable, a copy of the next of kin's written request to employ a particular funeral director
- Ø Copies of the TC 62-55 form, *Consent & Authorization* (**Exhibit 36**)

Note: All members of the nearest class of next of kin are to authorize relocation of remains.

- Ø Copies of the TC 62-65 form, *Consent & Release* (**Exhibit 38**)

Note: The owner of the disinterment site is to execute this form to release the Cabinet and its contractors to enter upon the site to disinter remains.

- Ø Copies of the TC 62-64, *Reinterment Agreement* (**Exhibit 37**)

Note: The owner of the reinterment site is to execute this form to release the Cabinet and its contractors to enter upon the site to reinter remains.

- Ø Copies of public notices published pursuant to "Public Notice" in **ROW-1303** for unknown graves or remains where the next of kin cannot be located
- Ø Copy of the grave relocation agent's affidavit and the county fiscal court resolution
- Ø List of remains for whom next of kin could not be located
- Ø Plat of the disinterment cemetery showing an accurate location, boundary (by distance and bearings) of the entire cemetery, the way the proposed right-of-way will affect the cemetery, the graves to be relocated, the grave numbers, and the name of the remains in each grave, when known. When the remains are unknown, the plat is to



REVIEW PROCEDURES**(cont.):**

designate the remains as “Unknown.” The Division of Highway Design is to provide the plat in accordance with the *Highway Design Guidance Manual*.

- Ø Plat or sketch of the reinterment cemetery that shows the proposed reinterment grave site number and the name of the remains being relocated, when known

Note: When the remains are unknown, the plat or sketch is to designate the remains as “Unknown” and is to list the remains’ disinterment grave number.

- Ø Description of how to reach each disinterment and reinterment cemetery
- Ø Grave relocation agent’s estimate of cost for the grave relocation project (**Note:** The agent’s cost estimate is to be prepared as outlined in “Identifying Reinterment Cemetery” in **ROW-1303**.)

Upon review and approval by the Central Office, the district is to oversee the contract to relocate human remains pursuant to procedures outlined in **ROW-1100**, “Sealed Bids & Public Auctions.”

2 2 2

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<p><i>Section</i></p> <p>BID INVITATION PROCEDURES</p>			
<p><i>Subject</i></p> <p>Notice to Contractors</p>			

**NOTICE TO
BIDDERS:**

Promptly after receipt of the notice from the Division of Purchasing that a bid contract has been awarded, the district is to provide written notice to all bidders. The successful bidder's notice is to advise that the following items are to be received before a work order will be issued:

- Ø Performance and payment bonds as provided in the invitation
- Ø Certificate of insurance
- Ø Proof of workers' compensation insurance

**SECURING
DISINTERMENT
& REINTERMENT
PERMIT:**

Promptly after the Division of Purchasing approves acceptance of a bid, the Relocation Branch Manager is to secure a disinterment and reinterment permit from the Office of the Registrar of Vital Statistics. A copy of the permit, which authorizes relocation of graves included in the contract, is to be provided to the district. The district is to retain a copy of the permit in the grave relocation project file and attach a copy to the contractor's work order.

**ISSUING
WORK ORDER:**

Upon receipt of the disinterment and reinterment permit and items outlined in "Notice to Bidders," the right-of-way supervisor is to issue a work order to the contractor. The supervisor is to attach a copy of the disinterment and reinterment permit to the work order. Upon issuance, a copy of the work order and all items specified in "Notice to Bidders" are to be provided to the Relocation Branch Manager.

2 2 2

	Section BID INVITATION PROCEDURES
	Subject Contract Completion & Payment

**CONTRACT
COMPLETION:**

Unless otherwise specified in the invitation, the contractor may submit an invoice requesting payment of 90 percent of the proposal amount when work has been successfully completed and accepted.

When the contractor has successfully completed all work and the grave relocation agent has conducted an initial inspection, the right-of-way supervisor is to notify the contractor that the work has been conditionally accepted. The notice is to request submittal of the TC 31-519 form, *Standard Invoice (Exhibit 16)*, for payment of 90 percent of the contract amount. Final acceptance and payment are to be made as outlined in "Final Inspection & Payment" (see next page).

**PAYMENT TO
CONTRACTOR:**

The contractor must prepare, sign, and submit an acceptable TC 31-519 form for payment. When the right-of-way supervisor has approved the invoice, the district is to request payment through remote data entry and submit to the Relocation Branch Manager a copy of the invoice along with the following items:

- Ø Copy of the supervisor's notice to the contractor accepting work completed pursuant to the contract
- Ø TC 62-52 form, *Grave Data Sheet (Exhibit 35)*, reflecting work completed pursuant to the contract
- Ø Plat or sketch of the reinterment cemetery showing the sites to which remains (by name when known) were actually relocated. When the remains are unknown, the plat or sketch is to designate them as "Unknown." The plat or sketch is to list the proper disinterment grave number and identify the reinterment cemetery's name and reinterment plot number.
- Ø Copy of the contractor's bid, page 1 of the contractor's proposal




**FINAL
INSPECTION
& PAYMENT:**

After a reasonable time, not to exceed 180 days, the grave relocation agent is to inspect reinterment site(s) to determine whether substantial sod has been established or whether sinkage of the graves has occurred. The district is to notify the contractor to correct any deficiencies prior to payment of the final 10 percent of the contract amount. The contractor's notice is to be in writing, with a copy forwarded to the Relocation Branch Manager.

After all deficiencies are corrected and the grave relocation agent conducts a follow-up inspection, the right-of-way supervisor is to notify the contractor that the work has been accepted. The notice is to return the contractor's performance bond and, when applicable, request submittal of the TC 31-519 form for payment of the remaining 10 percent of the contract amount. The contractor is to prepare, sign, and submit an acceptable TC 31-519 form for payment. When the right-of-way supervisor has approved an invoice, the district is to request payment through remote data entry and submit to the Relocation Branch Manager a copy of the invoice and the supervisor's notice accepting work completed pursuant to the contract.

2 2 2

	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>District Supervision of Contract</p>

INSPECTION & CONTROL:

The grave relocation agent is to be present at all times when remains are being disinterred, transferred, and reinterred and when monuments and grave markers are being removed, transferred, and set. The agent is to ensure work is accomplished in compliance with the contract. The contractor is not to engage in the above-mentioned work when the agent is not present.

The grave relocation agent is to inspect each reinterment container to ensure it meets requirements specified in the invitation and is to keep a daily record of grave relocation activities. The agent is to record very specific contents of each grave on the TC 62-52 form, *Grave Data Sheet (Exhibit 35)*. In addition, the agent is to accurately maintain the disinterment and reinterment plats, including a complete list of grave numbers and names. The next of kin of the deceased being relocated are to be permitted to be present, and, if desired, a brief religious service may be held. All others except those associated with the contractor are to be excluded from the work site.

The grave relocation agent is to inspect the contents of each grave and is to have final authority to determine whether or not a grave exists and what constitutes the remains.


UNMARKED GRAVES:

In cemeteries where there are no markers or where the existence of graves is uncertain because markers have been moved, it may be necessary to dig to ascertain the existence of graves. The grave relocation agent is to mark the disinterment plat with a crosshatch grave symbol to reflect that no grave was found following digging. Contracts are to include provisions to pay contractors for digging to ascertain the existence of graves, even when graves are not found.

STAKING:

The grave relocation agent is to ensure that each reinterment grave in nonestablished cemeteries is staked and properly numbered. The stake is to remain in position until the grave is permanently identified.

2 2 2

	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p>
	<p><i>Subject</i></p> <p>Contractor Requirements</p>

GENERAL

REQUIREMENTS:

The contractor is to be present during all phases of the actual disinterment and reinterment of remains and is not to subcontract any portion of the work without prior written approval of the Director of the Division of Right of Way and Utilities.

The contractor is to assume all risks of damage to property or injury to persons resulting from work performed under the contract. The contractor is also responsible for all work specified in the contract and for all tools, appliances, and equipment needed to disinter, reinter, transport, and reset monuments, grave markers, and gravestones.

DISINTERMENT:

All disinterment work is to be accomplished in a manner reflecting proper respect for the deceased and the next of kin. During inclement weather disinterment is to be accomplished under a tent or other suitable enclosure.

Mechanical equipment may be used to begin excavation in a disinterment cemetery, but the contractor is to dig by hand to remove all remains. Excavations are to be to the dimensions necessary to properly remove all remains (minimum 6 feet deep by 3 feet wide by 4 feet long). The remains removed for reinterment are to include all of the body, clothing, jewelry, personal effects, casket or coffin, and any other material placed in the grave at the time of the original burial.

If no remains are found, the grave relocation agent is to determine whether any additional excavation is necessary. The grave relocation agent is to have the final authority to determine whether a grave exists and what constitutes the remains.

Some graves may contain a burial vault made of steel, concrete, fiberglass, or a similar type of material. The contractor is to make every effort to remove material from the grave intact and without damage. The contractor is to replace any vault damaged during removal by the contractor. If a vault is not damaged but the family wants to replace it, replacement is to be at the family's expense. When possible, mechanical equipment may be used to facilitate removal of vaults. Care is to be taken to prevent damage to adjacent graves or monuments during such removal.



**REINTERMENT
CONTAINERS:**

The contractor is to furnish a good-quality reinterment container for each body or remains relocated. Pursuant to 901 KAR 5:090, disinterred human remains are to be enclosed in a container constructed of strong material and of sufficient size to hold the remains without altering their shape or size.

If the human remains are not thoroughly decomposed, the container is to be sealed to prevent the escape of liquids or gas. Reinterment containers are to meet specifications outlined in the bid invitation and, at a minimum, are to be no smaller than the following sizes:

- Ø Large: 30" deep by 36" wide by 87" long
- Ø Small: 12" deep by 18" wide by 36" long

Each reinterment container is to have affixed to the head end a rustproof 2-inch by 4-inch plate on which is to be inscribed the name of the deceased (when known), the name of the disinterment cemetery, and the grave's disinterment number.

Upon removal from the grave, the vault is to be marked (with paint or permanent marker, for example) at the head end to show the grave number and name. Such marking is to correspond with the reinterment cemetery plat and the TC 62-52 form, *Grave Data Sheet (Exhibit 35)*.

**REMOVAL &
TRANSPORTATION
OF REMAINS:**

All remains—including jewelry, identification markers, coffin, or other containers—are to be removed from each grave and transferred to the container provided for that purpose. This container is to be sealed with a cover, and identification plates are to be properly attached. Reinterment containers are to be covered (with a tarpaulin, for example) while being transported to the designated cemetery for reinterment. If it is necessary to hold the remains overnight, they are to be transported to a licensed funeral home for safekeeping.

REINTERMENT:

New graves in the reinterment cemetery are to be spaced so as to provide each with a minimum of a four-foot by nine-foot plot. Mechanical equipment may be used to excavate new graves. Pursuant to **901 KAR 5:090**, excavation depth is to be as follows:

- Ø When the outer burial container is made of concrete, metal, fiberglass, or other impervious material and is hermetically sealed, all parts of the container are to be buried to a depth of at least two feet below the level of the natural surface of the ground. All other burials are to be at least three feet below the level of the natural surface of the ground measured from all parts of the outer container.



**REINTERMENT
(cont.):**

- Ø When impenetrable rock is encountered, the local health department may, upon proper application, grant a variance to the depth of burial requirements. When a depth waiver is secured from the local health department, excavation is to stop at the depth specified in the waiver.
- Ø These depth-of-burial requirements apply to all reburials except that thoroughly decomposed human remains may be reburied to such a depth so that no part of the container is less than two feet below the natural surface of the ground.
- Ø The depth of burial requirements does not apply where interment is in a mausoleum.

CHANGE IN SITE: If the next of kin elect to reinter remains in a location other than the designated reinterment site, such change is to be requested in writing by the next of kin and approved in writing by the Director of the Division of Right of Way and Utilities.

**RELIGIOUS
SERVICES:**

A brief religious service desired by the next of kin is to be allowed.

**EXISTING
MONUMENTS
OR MARKERS:**

The contractor is to remove all monuments, headstones, footstones, gravestones, and grave markers, including all metal markers and ornaments of value, from existing graves and transport and reset them at the proper reinterment sites. All such items are to be clearly marked during relocation to ensure their replacement at the correct graves. The contractor is to take all precautions to protect such articles from damage during the operation and is to replace at his or her expense any such items that are damaged or broken during the operation.

**NEW
MONUMENTS:**

The contractor is to provide a monument for each unmarked grave. Monuments are to be of good-quality granite, a minimum of 18" long by 8" tall by 4" thick, and are to be inscribed with:

- Ø Deceased's name (when known) or "Unknown"
- Ø Year of birth and year of death (grave number for "Unknown")
- Ø Name of the disinterment cemetery

**SETTING OF
MONUMENTS:**

All grave stones and monuments are to be set at the proper reinterment site on concrete foundations that extend beyond the monument bases by at least two inches on every side. Forms are not required for the foundations, except where the ground's contour requires that part of a foundation be above ground, provided reasonably neat lines can be excavated. The depth and thickness of concrete foundations are to be at least twice as thick as the monument bases, and in all cases are to be sufficiently thick to properly support the monuments. Monuments are to be installed in accordance with these instructions and the invitation.



**BACKFILLING,
GRADING, &
SEEDING:**

The contractor is to open and close all disinterment graves. For safety reasons all disinterred grave sites are to be backfilled each work day. When all graves have been removed from the disinterment site, the general area is to be returned to its natural ground elevation and is to be left in a neat and clean condition. The contractor is to seed areas disturbed in the disinterment site when specified in the invitation.

Each grave is to be individually dug, and, where good sod exists, it is to be removed for replacement. Upon refilling, the grave is to be thoroughly compacted and the sod replaced. Where no sod exists, the contractor is to fertilize, seed, and straw the reinterment area, and any other disturbed areas in the reinterment cemetery, to the satisfaction of the grave relocation agent.

FENCING:

In cases where fencing existed originally and is to be replaced at the reinterment cemetery, the contractor is responsible for supplying and erecting a fence of equal or better quality at the new site. Any fencing needed is to be specified in the invitation.

**SHRUBS &
DECORATIVE
PLANTS:**

The contractor is responsible for replacing existing shrubs and decorative plants on an item-for-item basis as specified in the invitation.


ACCESS:

Access may be provided to all reinterred graves. The Division of Right of Way and Utilities is to consider approval for the construction of a road to provide necessary access. Provisions for such construction are to be included in the invitation.

SANITATION:

The contractor is to provide and maintain in a neat and sanitary condition such accommodations for the use by his or her employees as may be necessary for human waste. Any acceptable type of portable sanitary facility will suffice.

2 2 2

	<p><i>Chapter</i></p> <p>RELOCATION OF HUMAN REMAINS</p> <hr/> <p><i>Subject</i></p> <p>Final Notice to Office of Registrar of Vital Statistics</p>
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FINAL NOTICE: When payment to a contractor is made, the grave relocation agent is to immediately provide the Relocation Branch Manager with the following items:

- Ø Copy of the right-of-way supervisor's notice to the contractor accepting the contractor's work
- Ø TC 62-52 form, *Grave Data Sheet (Exhibit 35)*, reflecting work completed pursuant to the contract
- Ø Plat or sketch of the reinterment cemetery showing the actual reinterment site number and the name of the remains relocated, when known

Note: When remains are unknown, they are to be designated as "Unknown," and the plat or sketch is to list the proper disinterment grave number and identify the reinterment cemetery's plot number.

Upon receipt of these documents, the Relocation Branch Manager is to provide a copy of the last two items above to the Office of the Registrar of Vital Statistics with written notice that the grave relocation project has been completed. Complete copies are to be maintained in the district and central office files.

2 2 2


	<p><i>Chapter</i></p> <p>ADMINISTRATION & PROJECT CLEARANCE</p>
	<p><i>Subject</i></p> <p>Policy</p>

POLICY: The Division of Right of Way and Utilities is to conduct surveys of property owners and displaced persons affected by right-of-way projects and is to participate in periodic reviews of district office operating procedures to promote and ensure quality control of the acquisition and relocation process and compliance with the Uniform Act (**Exhibit 05**).

The division is to advise appropriate personnel as soon as practical when a project is clear for construction and is to process necessary documents to ensure excess money from a project is made available for assignment to other projects.

If possible the district should immediately process all necessary documentation to “close” the right-of-way phase of the project. If right-of-way closure is not possible due to “condemnation” cases pending, then this should be noted in Oracle and an e-mail sent to the acquisitions branch manager in Central Office.

2 2 2

	<p><i>Chapter</i></p> <p>ADMINISTRATION & PROJECT CLEARANCE</p>
	<p><i>Subject</i></p> <p>Clearance of Projects</p>

OVERVIEW:

Right-of-way projects sometimes include multiple construction sections. When the Cabinet schedules a project or section for construction, the district right-of-way supervisor is to prepare and submit a clearance letter to the Director of the Division of Right of Way and Utilities at least one month prior to the date of the plans, specifications, and estimate (PS&E). Before right-of-way can be reported clear, all improvements located within project limits are to be removed or approved for removal by the roadway contractor.

According to 23 CFR 635.309, all interstate projects and selected noninterstate projects require the submission of a right-of-way certification letter to the Federal Highway Administration (FHWA) for approval prior to authorization of construction. Certification letters for all other NHS projects are to be submitted to FHWA as informational copies.

Refer to the most recent Oversight Agreement between the KYTC and the FHWA division office that outlines which projects are to be monitored at the PS&E stage by FHWA as required by USC 106(c)(3).

**RIGHT-OF-WAY
CERTIFICATION:**

A Certification Letter form is to be used with both state and federal projects. A right-of-way certification letter, commonly referred to as a clearance letter, is to contain/identify the following information:

- Ø Number of parcels on the construction project, including a breakdown of:
 - ◆ Number of parcels purchased
 - ◆ Number of parcels acquired through condemnation
 - ◆ Names and dates the Interlocutory Order and Judgment (IOJ) were filed and money posted
 - ◆ Identification and explanation of any Right of Entry (ROE)
 - ◆ Number of parcels not yet clear (When a parcel is not clear, the parcel number, the owner's name, the exact status of the parcel, and the expected right-of-entry date for the parcel are to be provided.)
 - ◆ Form TC 62-21A, *Condemnation Pay Statement (Exhibit 26)*, for any parcel in condemnation



**RIGHT-OF-WAY
CERTIFICATION
(cont.):**


- Ø Statement verifying:
 - ◆ That all persons displaced have been or will be relocated to decent, safe, and sanitary housing or, if applicable,
 - ◆ That no persons were displaced as a result of the project
- Ø Payments to property owners not completed (including expected payment dates)
- Ø Property owners granted permission to remain in improvements for a specified length of time (including the specific date they are to vacate)
- Ø Encroachments still on the right-of-way (along with an explanation of why they remain on the right-of-way and their ultimate disposition, including how and when they will be removed)
- Ø Disposition of any underground storage tanks or hazardous materials
- Ø Statement verifying:
 - ◆ That there are no water or monitoring wells located within the area to be acquired for this project or, if applicable,
 - ◆ That water or monitoring wells have been acquired (When a water well is acquired, the parcel number and location of the acquired well are to be provided. Distance, right or left, from the appropriate station number is to be used to locate acquired water or watering wells.)
- Ø Any other special or unusual situation

All exceptions are to be thoroughly explained to enable preparation of the division's right-of-way project certification (a requirement of the FHWA and Division of Highway Design PS&E submissions prior to letting).

The district right-of-way supervisor is to closely monitor all exceptions and submit revised clearance letters as exceptions are cleared.

Clearance letters with exceptions are also to be revised and resubmitted to the Assistant Director of the Division of Right of Way and Utilities if a project's original letting date is slipped. Revised clearance letters are to be submitted one month prior to the project's new PS&E date.

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<p><i>Chapter</i></p> <p>ADMINISTRATION & PROJECT CLEARANCE</p>			
<p><i>Subject</i></p> <p>Project Credits</p>			

OVERVIEW: Project credits are processed through the Records and Billing Section of the Division of Right of Way and Utilities. Credits are placed on the TC 31-36 form, *Credit Voucher* (**Exhibit 39**), and forwarded to the Division of Accounts for proper disposition and deposit.

If the project has federal funds in the right-of-way phase, the federal share is credited to projects eligible under Title 23 of the United States Code. The state share is credited to the appropriate account.

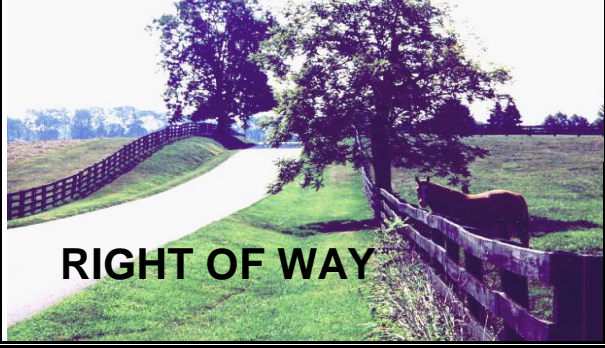
**EXCESS PROPERTY
ON FEDERAL
PROJECTS:**

When federal funds are used to acquire right-of-way and when excess property is acquired, a before-and-after value appraisal is made.

The Federal Highway Administration (FHWA) is billed only for the amount paid to acquire that portion of the property actually used for highway purposes (including damages, if any, to the remainder).

When excess property is sold, the Records and Billing Section assures proper credit to the appropriate project.

2 2 2

	<i>Chapter</i> ADMINISTRATION & PROJECT CLEARANCE
	<i>Subject</i> Citations

POLICY:

Central Office personnel are to provide oversight and random reviews of work products submitted for payment. Work products and documents that are in error or that do not comply with policy and procedures are to be promptly returned to the district office for correction. Any documents or work products completed that do not comply with current policy and procedures or that violate current federal regulations and that are not correctable are to be processed as nonparticipating items. The district office is to be advised of the noncompliance incident.

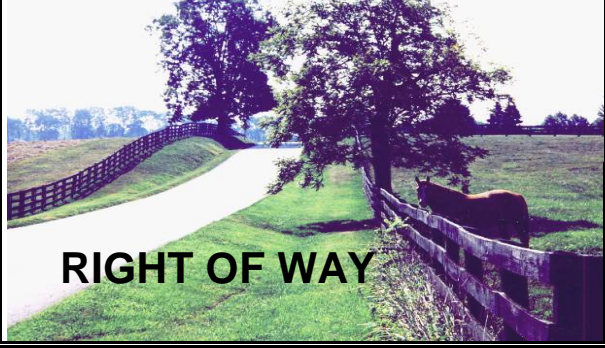
When federal aid project expenditures are declared nonparticipating by the Federal Highway Administration (FHWA), appropriate action is to be taken immediately.

If the Cabinet rejects the citation, rebuttal is to be submitted to the FHWA. If the citation is accepted, a memorandum to this effect is to be submitted to the FHWA division administrator and the right-of-way officer, with copies to the Department of Administrative Services and the Division of Accounts.

Copies of all documents having direct bearing on nonparticipating items are to be sent to the Division of Accounts.

Note: Sanctions always carry with them the suggestions or recommendations for correction, and an implementation plan must be developed, delivered, and audited.

2 2 2

	Chapter ADMINISTRATION & PROJECT CLEARANCE
	Subject Quality Assurance Reviews

POLICY: Quality assurance reviews are intended as a means of internal oversight for program delivery within the various functions of Right of Way. These reviews may focus on any function of the right-of-way program.

REVIEW TEAM: The Central Office right-of-way staff members are to periodically review district office operating procedures to promote and ensure quality assurance of the acquisition process and compliance with *The Uniform Act (Exhibit 05)*.

The review team is to consist of at least one of each of the following, unless otherwise authorized by the Division of Right of Way Director and the local FHWA representative:

- Ø Central Office branch manager (team leader)
- Ø District right-of-way supervisor (from another district)
- Ø FHWA representative

**SCHEDULING
OF REVIEWS:**

During the last quarter of each year, the Division of Right of Way and Utilities and FHWA are to select districts to be reviewed the following year. Districts scheduled for review are to be advised well in advance of the review date to ensure appropriate personnel are available.

Note: The scheduling of routine reviews does not preclude an unscheduled review of any district's operating procedures.

**REVIEW
GUIDELINES:**

Each Central Office Right of Way branch manager, working with FHWA, shall establish criteria for the review of the district as it relates to the discipline of the branch. The review team members will use the criteria relating to their areas of responsibility. These criteria should not take away from the individualism of the team members who conduct the review.

Reviews may include the district's project files, interviews with selected district personnel, and methods used to assure compliance with established policy and procedures. In some cases, reviews may also include property owner interviews.



**REVIEW
GUIDELINES****(cont.):**

Each review is to include an entry and exit conference with appropriate district personnel in which the findings are reported.

The review team is to provide a written report to the Director, Division of Right of Way and Utilities. The director will provide a report to the chief district engineer, the preconstruction engineer, and the right-of-way supervisor.

The final report will identify the current findings and any deficits. When deficiencies are found, they should be discussed during closeout with the right of way supervisor. The final report should include recommendations and an implementation strategy for making any needed changes.

The final report shall be submitted in an approved format.

**TIMELINE FOR
FINAL REPORTS:**

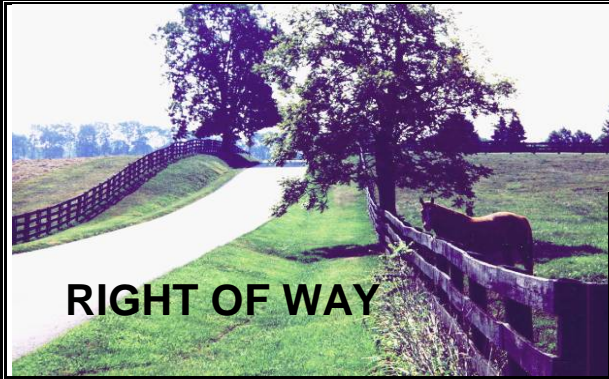
The tem leader shall be responsible for preparing the final report and scheduling follow-up reviews for implementation strategies.

Within fifteen (15) working days after the completion of the review, the team leader will arrange and conduct a meeting with the other team members for the purpose of preparing their individual reports relative to their areas of the review.

Within fifteen (15) working days after the team members have completed their individual reports, the final report is to be submitted to the Director of the Division of Right of Way.

No right-of-way staff member should accept an assignment on the Review Team if he or she is not able to comply with the schedule for the completing the reports. It shall be the responsibility of the team leader to ensure the report submission schedule is met.

2 2 2

**Chapter****SALE & DISPOSAL OF
SURPLUS REAL PROPERTY****Subject**

Purpose, Authority, Policy, & Definitions

PURPOSE:

The purpose of this chapter is to:

Ø Establish uniform procedures to:

- ◆ Review real property acquired through the right-of-way acquisition process
- ◆ Dispose of those properties that can be declared surplus to the needs of the Transportation Cabinet

AUTHORITY:

The authority for the procedures utilized by the Kentucky Transportation Cabinet (KYTC) in selling and disposing of surplus real property may be found in the following regulations and statutes:

- Ø 23 CFR 710.409
- Ø 23 CFR 710.403
- Ø KRS 45A.045
- Ø KRS 45A.080
- Ø KRS 48.710
- Ø 200 KAR 5:306
- Ø KRS 416.670

POLICY:

The Division of Right of Way and Utilities is responsible for disposing of all real property owned by the Commonwealth of Kentucky for the use and benefit of the KYTC that is surplus to the Cabinet's needs. This property includes but is not limited to:

- Ø Right-of-way acquired in excess of actual needs of highway projects
- Ø Surplus right-of-way
- Ø Highway maintenance facilities

The sale of this type of property must follow standard business practices that render the highest return for the taxpayers of Kentucky. Disposal actions must also meet all Commonwealth of Kentucky and federal regulations when applicable.



POLICY (cont.): This chapter is not intended to include relinquishments, which are defined as transfers of highway facilities for continued highway use.

For guidance relative to release of access control, see the KYTC's Permits Manual (**PE-400**, "Access Control").

DEFINITIONS: **Access rights:** Property rights acquired with the purchase of right-of-way for the control and safety of the traveling public when a road is built. When these rights are disposed of, they must meet the same requirements as any other disposal.

Bid list: List of qualified bidders

Bid packet: Documents assembled for distribution to prospective bidders

Excess right-of-way: Property acquired in connection with a bond-funded state road or federally funded road, which at the time of acquisition was not needed for right-of-way purposes. Though federal funds may be used to purchase right-of-way, normally there is no federal participation in the acquisition of excess right-of-way. Excess property is:

- Ø Designated as excess by separate description in the deed to the Commonwealth
- Ø Always outside the proposed right-of-way limits
- Ø Severed from another remainder, denied reasonable access, or changed by the acquisition to the point it has no utility or value to the present owner

Source list: List of qualified bidders

Surplus property: Property declared surplus to the needs of the KYTC by an Official Order of the Commissioner of the Department of Highways or the Secretary of Transportation. Before declaring property surplus to the Cabinet's needs, a review is to be completed to determine that:

- Ø It is no longer needed for the purpose for which it was acquired
- Ø It will not be needed for KYTC-related purposes in the foreseeable future
- Ø Disposal of the property will not create a hazardous situation for the public

2 2 2

	<p><i>Section</i></p> <p>DISPOSAL OF EXISTING STATE RIGHT OF WAY</p>
	<p><i>Subject</i></p> <p>Review</p>

REVIEW:

Sometimes after a highway project has been completed, it is determined that a portion of the existing right of way can be used more suitably by an adjoining property owner or by another public agency. Before it can be disposed of, the property must be declared surplus to the needs of the Cabinet.

The district is to review real property acquired for right-of-way purposes for potential disposal due to either the:

- Elimination of the facility from state maintenance
- Recommendation of conveyance of property to private ownership or to another public agency

If it appears that the property can be declared surplus, a joint district office-Central Office review is to be made. If it is determined that the property is to be retained, the person initiating the request is to be advised that the property is not available for sale and will be retained by the Cabinet.

**PUBLIC ENTITY
REQUESTS:**

A public entity may be given priority over other potential applicants to acquire surplus real property owned by the Cabinet if the transfer is determined to be in the Commonwealth's best interests and if the requested property remains in public use.

If the conveyance of surplus property is to be made for less than fair market value, the requesting public entity shall ordinarily agree that said property shall be conveyed so long as the property is employed for a public use.

The fair market value of any property interest to be conveyed to a public entity shall be determined and disclosed on any instrument of conveyance.

If the requesting public entity intends to pay fair market value for the property to be conveyed, the request should ordinarily be processed with the same requirements as a private request (see below).



**PRIVATE
REQUESTS:**

An individual making a request to purchase right of way from the Cabinet is to complete Section 1 of the TC 62-8 form, *Application to Purchase State Right of Way (Exhibit 40)*. The person requesting the property is to ascertain whether he or she is the only fronting adjacent property owner. If the applicant is not the only fronting adjacent property owner, the applicant is to obtain a “Waiver of Right to Purchase” from any and all fronting adjacent property owner(s).

The applicant is to be informed that:

- Current fair market value will be charged
- Personnel in the Cabinet’s district office and Central Office will review the request, as well as the Federal Highway Administration (FHWA) if the property was acquired as right of way on the interstate highway system

Any request to waive fair market value on interstate and National Highway System highways requires:

- Public interest determination
- Prior approval of the FHWA

Exceptions to the general requirement for charging fair market value are set out in 23 CFR Part 710.403(d) (**Exhibit 01**). The deed is to provide for reversion of the property for failure to continue public ownership and use.

Upon completion of the sale of the property, the new owner, at his or her expense, is required to do the following within 90 days:

- Place right-of-way monuments at the new property corners
- Replace any required fencing

**JOINT DISTRICT
OFFICE–CENTRAL
OFFICE REVIEW:**

The district office and Central Office are to conduct a joint review of a property when it appears the property can be declared surplus. This review is to be coordinated by the district right-of-way staff, unless the district executive director determines that a staff member in another area coordinates requests for that district.

The following areas are to review the request and complete the appropriate page of the TC 62-7 form, *Checklist for Disposal of Surplus Property (Exhibit 41)*:

- Project Development
 - ◆ Central Office Division of Highway Design—Drainage Section



**JOINT DISTRICT
OFFICE—CENTRAL
OFFICE REVIEW
(cont.):**

- Engineering Support
 - ◆ Central Office Division of Maintenance—Permits Branch
- Project Delivery & Preservation
 - ◆ Central Office Division of Maintenance field engineer
- District environmental coordinator (evaluates environmental effects of disposal action involving federal funds, as provided in 23 CFR Part 771)

If the joint district office-Central Office review indicates that the property can be declared surplus, the person making the request is to be notified and requested to provide:

- Plat prepared by a registered land surveyor and description of the property to be conveyed

The plat is to depict the application area along with the applicant's adjacent property lines at the point they intersect with the existing right-of-way line. At this point of intersection, the applicant's property line, as shown on the plat, is to be perpendicular to the centerline of the highway. All bearings and distances are to be tied to the highway centerline and station numbers. The plat is to include the following statement and must be signed by the applicant, "I hereby certify that I am the only fronting adjacent property owner, and there are no known property line disputes as of this date." The plat is to locate items such as:

- ◆ Access points
- ◆ Utilities
- ◆ Easements

Specific information regarding the following is to be provided:

- ◆ Affected drainage
- ◆ Level of the application area as it relates to the existing highway grade
- ◆ Any other pertinent information

Any alteration made to the application area by permit is to be noted on the plat and plan sheet, and a copy of the permit application or issued permit is to be provided.

- Current fair market value appraisal of the property prepared by an appraiser prequalified by the Cabinet. The purpose of the appraisal is to find:
 - ◆ Contributing value of the surplus to the adjacent tract
 - ◆ Separate "stand alone" or entity value of the surplus property



**JOINT DISTRICT
OFFICE-CENTRAL
OFFICE REVIEW****(cont.):**

The applicant is to be advised that he or she is required to pay the higher of the two values (see **ROW-602**, “Appraisal Standards,” **Surplus Property**, for further clarification).

The appraiser is to be advised of all restrictions to be included in the deed, such as:

- ◆ Easements
- ◆ Restricted or prohibited access
- ◆ Prohibition of the erection of billboards

Note: Any proposed sale that is noncomplex and valued at \$10,000 or less may be appraised by a qualified Cabinet employee and approved by the right-of-way supervisor using the Minor Acquisition Review (MAR) process outlined in **ROW-702**, “Initiating Negotiations.”

When use of the MAR process is appropriate, this form of valuation will be used to determine fair market value.

- Three sets of layout and plan profiles (as-built) with the property under consideration marked in yellow
- Color photographs of the property showing the requested area in relation to the adjoining highway

The district is to forward two (2) complete packets (original and one copy) of the following to the Central Office:

- Completed TC 62-7 form, *Checklist for Disposal of Surplus Property (Exhibit 41)*
- Plat prepared by a registered land surveyor and description of the property to be conveyed, in hard copy and CD form
- Five sets of layout and plan profiles (as-built) with the property under consideration marked in yellow
- Color photographs of the property showing the requested area in relation to the adjoining highway
- TC 62-8 form, *Application to Purchase State Right of Way (Exhibit 40)*, signed and completed by the applicant, the district excess agent, and the district executive director
- Copy of the right-of-way deed
- Copy of the applicant’s deed to the adjoining property



	Section DISPOSAL OF EXISTING STATE RIGHT OF WAY
	Subject Encroachment Permit

**ISSUANCE OF
ENCROACHMENT
PERMIT:**

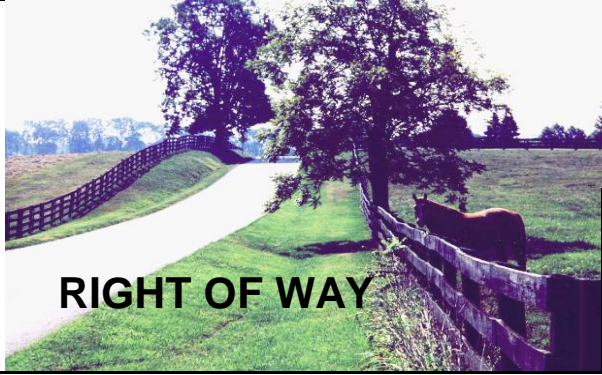
The district permits engineer is to inform a person applying for an encroachment permit that the applicant is to complete an application to purchase state right-of-way at the same time if the applicant intends to purchase the affected right-of-way. The granting of the encroachment permit does not imply that the TC 62-8 form, *Application to Purchase State Right of Way* (**Exhibit 40**), will automatically be approved.

The applicant is to be advised that no grading may commence on the right-of-way until the:

- Ø TC 62-8 form, *Application to Purchase State Right of Way* (**Exhibit 40**), has been approved
- Ø Encroachment permit has been issued

If the right-of-way is improved, with or without issuance of an encroachment permit prior to the date the TC 62-8 form is accepted, the right-of-way is to be appraised in its improved condition. Should encroachment-permitted activities be incomplete at the time the deed is to be executed, the property closing is to be delayed until the permitted activities have been completed. Should the encroachment-permitted activities not be completed to the satisfaction of the Cabinet within the period of the permit, appropriate personnel are to conduct an evaluation regarding disposition of the property.

2 2 2

	<p><i>Section</i></p> <p>DISPOSAL OF EXISTING STATE RIGHT OF WAY</p>
	<p><i>Subject</i></p> <p>Central Office Action</p>

**CENTRAL OFFICE
ACTION
GUIDELINES:**

Requests recommended by the chief district engineer and referred to the Division of Right of Way and Utilities are to be reviewed for compliance with Cabinet policy and procedure. If the requested right-of-way was acquired as interstate right-of-way, the requested design change and the appraisal are to be forwarded to the Federal Highway Administration (FHWA) for review and approval of the disposal:

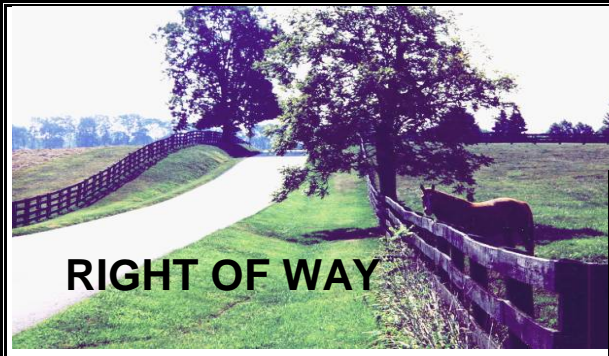
Upon approval by appropriate Central Office personnel and by the FHWA, when applicable, and upon completion of the appraisal review, a purchase agreement is to be prepared and the applicant is to be notified of the amount of payment that is to be received for the property

Upon receipt by the division of a purchase agreement signed by the purchaser and the required good faith deposit, an official order is to be prepared to declare the property surplus to the Cabinet's needs. The official order is to be forwarded for execution to the Commissioner of Highways or the Secretary of Transportation. If the property was acquired with highway bond-issue funds (i.e. parkways, resource recovery roads, economic development roads, etc.), the request is to be submitted to the Turnpike Authority of Kentucky for review and approval at its semiannual meeting (see **ROW-1505**, "Sale of Bond-Funded Excess/Surplus Property").

Upon approval of the Commissioner of Highways or the Secretary of Transportation and upon the assent of the Turnpike Authority of Kentucky, when applicable, the following are to be sent to the Finance and Administration Cabinet for final approval:

- Ø Approved order
- Ø Appraisal of the property
- Ø Deed

2 2 2

**Chapter**DISPOSAL OF EXISTING
STATE RIGHT OF WAY**Subject**

Disposal of Property Acquired by
Highway Purpose Deed & Other
Disposals

HIGHWAY**PURPOSE DEED:**

Requests for the disposal of property acquired by highway purpose deed and no longer needed for Kentucky Transportation Cabinet use due to realignment are to be reviewed in the same manner as other private requests. Disposals may be made by request as in turnbacks or relinquishments to other government agencies. If fee simple title was not taken, an appraisal is not necessary.

OTHER**DISPOSALS:**

When the Cabinet initiates the release of existing right-of-way, the degree of review and administration varies depending on the nature of the case. The following phases and requirements generally prevail with necessary modification:

Example 1—The improvement or new construction of a roadway severs old existing right-of-way from future need. An easement or a highway purpose deed acquired the existing right-of-way. Statutes allow for such land to be quitclaimed at no cost to the abutting property owners. The review is outlined as follows:

- Ø A joint district office–Central Office review using the TC 62-7 form, *Checklist for Disposal of Surplus Property (Exhibit 41)*, is conducted as outlined in **ROW-1502-1**, "Review."
- Ø The district submits to the Central Office:
 - ◆ Completed TC 62-7 forms
 - ◆ Reproducible plat and plan sheets
 - ◆ Copy of the right-of-way deed
 - ◆ Names and addresses of the persons to whom the described property is to be conveyed
- Ø The Division of Right of Way and Utilities:
 - ◆ Reviews the request
 - ◆ Prepares documents to declare the property surplus
 - ◆ Submits the request for final approval to the:



**OTHER
DISPOSALS (cont.):**

- ◆ Commissioner of the Department of Highways or the Secretary of Transportation
- ◆ Secretary of the Finance and Administration Cabinet

Example 2—A project is withdrawn from the state highway system after a portion of the right-of-way has been acquired. The review is summarized as follows:

- Ø A joint district office—Central Office review using the TC 62-7 form is conducted as outlined in **ROW-1502-1**, "Review."
- Ø The district submits to the Central Office:
 - ◆ Completed TC 62-7 forms
 - ◆ Reproducible plat and plan sheets
 - ◆ Copy of the right-of-way deed(s)
- Ø The division obtains authority through the following to convey these parcels to the original grantors or their successors in title:
 - ◆ Commissioner of the Department of Highways or the Secretary of Transportation
 - ◆ Secretary of the Finance and Administration Cabinet

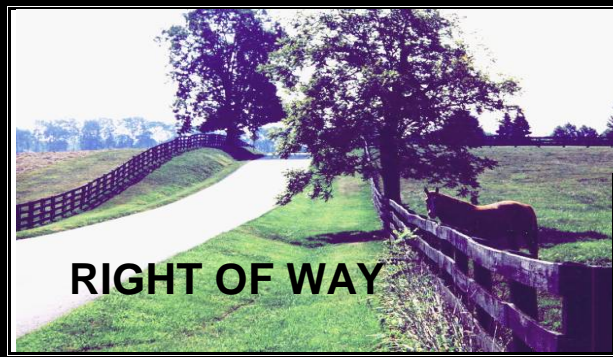
Property not desired by the original grantors or their successors in title is sold through public sales.

Example 3—A street or roadway is removed from state maintenance by official order of either:

- Ø Commissioner of the Department of Highways
- Ø Secretary of Transportation

No further Cabinet review is necessary. Specific requirements are governed by the nature of the conveyance. These transactions may be initiated by memorandum to the Division of Right of Way and Utilities.

2 2 2

**Chapter****SALE & DISPOSAL OF SURPLUS REAL PROPERTY****Subject**

Procedure for Disposal of
Excess Property

RECORDS:

Frequently, parcels of excess property are acquired in conjunction with the purchase of right-of-way for a highway project. When excess property is purchased, the district right-of-way section is to maintain individual parcel files containing the following documents:

- Ø TC 62-85 form, *Notice of Excess Purchased* (**Exhibit 22**)
- Ø 8½" x 11" reproducible plat
- Ø Legal description, in hard copy and CD form
- Ø Right-of-way deed
- Ø TC 62-56 form, *Payment Summary* (**Exhibit 23**)

The district is to retain excess property parcel files on a project basis, except those traded pursuant to **Trade of Excess Right-of-way on Active Project** (see next page), until two years after the highway construction project has been completed. The district is to maintain an inventory of all excess property purchased and is to check accumulated project records against the acquisition plans to confirm the total number of excess parcels acquired.

AFTER**CONSTRUCTION:**

The district right-of-way supervisor will begin a review of a project's excess property purchases two years after completion of the construction project. This review is to include but not be limited to a review of each excess property purchased on the project and completion of the TC 62-7 form, *Checklist for Disposal of Surplus Property* (**Exhibit 41**). All properties recommended for disposal may be incorporated on one form. However, any parcel to be retained is to be indicated on a separate, adequately documented TC 62-7 form.

The district is to forward excess property parcel files to the Division of Right of Way and Utilities when parcels are recommended for disposition. Files forwarded to the division are to contain all documents specified in **Records** (see this page). Files for excess property parcels recommended for disposition are to be accompanied by completed TC 62-7 forms and three sets of as-built plans with parcels outlined in red.

When parcel files are forwarded to the division, excess property data is added to a statewide inventory.



**MANDATORY
RESALE OF
CONDEMNED
PROPERTY:**

See **KRS 416.670**, referred to as the “eight-year law.”

**RETENTION OF
EXCESS
PROPERTY:**

The chief district engineer is to notify the Division of Highway Design of any parcel of excess property determined to be of some present or future use to the Cabinet. The Division of Highway Design will make the necessary notation on the record plans, designating this as existing right-of-way. The right-of-way sales inventory record is to indicate all such transactions and reasons for retention.

**TRADE OF EXCESS
RIGHT-OF-WAY ON
ACTIVE PROJECT:**

Excess right-of-way on an active project may be traded for rights of way on the same project if excess to project needs. To initiate the trade, the right-of-way supervisor is to recommend that the excess property be declared surplus. The project engineer and chief district engineer are to concur in the supervisor's recommendation and submit it to the Branch Manager for Property Management for Central Office approval. Upon completion of the transaction, the district is to submit to the Division of Right of Way and Utilities, along with a prepared deed to be executed:

- Ø TC 62-85 form, *Notice of Excess Purchased* (**Exhibit 22**)
- Ø Description and plat of the tracts of land to be traded, in hard copy and CD form
- Ø Value determination
- Ø Mailing address and social security number of the grantee, along with any other information needed to properly prepare a deed of conveyance
- Ø Memo with signature lines for CDE and project manager

The value determination can be the appraised after value, when its value can be abstracted from the appraisal. When several excess tracts are combined, additional documentation in the form of a review value finding may be required. Central Office is to have the deed prepared, executed, and returned to the district.

**EXCESS PROPERTY
RECOMMENDED,
APPROVED, &
AUTHORIZED FOR
SALE:**

All parcels of excess property are to be recommended for disposal in the form of a joint official order signed by the Commissioner of Highways and the Secretary of the Transportation Cabinet. The purpose of the order is to declare the parcel surplus to future needs and to request the Secretary of the Finance and Administration Cabinet to authorize disposal to another public agency or by public sale. The receipt of an approved joint official order from the Secretaries of the Transportation and Finance and Administration Cabinets constitutes authority to sell the property.



**APPRAISAL OF
EXCESS
PROPERTY:**

Each parcel of excess property that, at its date of acquisition, had an after-value of \$1,000 or less, is to be sold without reappraisal. Exceptions to this policy may be made when the reviewer determines that the new facility has substantially enhanced the subject property's value, in which case a new appraisal is to be made. A copy of the original acquisition appraisal is to be sent with the official order to the Finance and Administration Cabinet for each parcel not reappraised. An appraisal of current value is to be made on any other parcel or group of parcels exceeding the \$1,000 limit.

FIELD REVIEW:

Representatives of the district office and the Central Office are to make a field review of the property to:

- Ø Take photographs and become as familiar with each tract as possible
- Ø Identify each tract at strategic corners to simplify future signing and showing of the property
- Ø Identify landmarks that may be used to inform the public of the property location
- Ø Obtain the names of adjacent property owners and identify the most widely circulated newspaper in the area
- Ø Collect sales data and other necessary information such as access, zoning, conditional uses of the property, type of terrain, improvements, encroachments, utility easements, availability of public utilities, and crop and feed grain allotments

**SALE BY PRIVATE
NEGOTIATION:**

Normally, excess property is to be disposed of by sealed bids or public auction. Occasionally, sales may be conducted by private negotiations when circumstances indicate the public interest would best be served. Such sales are made to agencies or municipalities where such action and future use would directly benefit the public. All such sales are to be approved on an individual basis.

No sale may be considered final until approved by the Secretary of the Finance and Administration Cabinet.

**SALE BY
SEALED BID:**

When property is to be sold by sealed bid, procedures outlined in **ROW-1100**, "Sealed Bids & Public Auctions," are to be followed. Upon receipt of the approved official order from the Finance and Administration Cabinet, the district is to assemble all data necessary to prepare the TC 62-6 form, *Invitation for Bids: Sale of Excess Property* (**Exhibit 43**). A legal description and plat of the property are to accompany each invitation.



**SALE BY
SEALED BID
(cont.):**

Before setting a bid-opening date or distributing bids to prospective bidders, the district is to submit a proposed bid packet to the division's Surplus Property Section. Upon Central Office review and approval, the district is to solicit bids pursuant to procedures outlined in **ROW-1100**, "Sealed Bids & Public Auctions."

Invitations are to be made available to bidders at the district office or other appropriate locations. Copies of the invitation are to be mailed to persons who have expressed an interest in acquiring the property or to persons otherwise believed to be interested.

An envelope stamped "SEALED BID" on both the front and the back, with the district's address (including street and room number), the bid invitation number, and the date and time when bids are to be opened, is to be attached to each invitation.

All bids received are to have the "time and date received" noted on the envelope. Bids are to be filed by invitation number in a secure place to protect the integrity of the bidding process. No information is to be disclosed as to the number of bids received or the identity of the bidders.

BID

ADVERTISEMENT: Pursuant to KRS 45A.080(3), the district is to give public notice of an invitation for bids as outlined in **ROW-1104**, "Public Notice."

When the district elects to advertise a bid opening, the advertisement is to be published at least seven days prior to the opening of bids and is to contain the following information:

- Ø Notice that the sale is by sealed bid
- Ø Bid invitation number
- Ø Name of the using agency
- Ø General description of the properties to be sold, including parcel number and general location of the property
- Ø Date, time, and place at which bids are to be opened
- Ø Place or phone number from which the bid invitation may be requested
- Ø Notice that the Commonwealth reserves the right to reject any and all bids
- Ø Notice that the Cabinet can make accommodations for persons with disabilities if given 48 hours' notice prior to the bid opening

**OPENING
OF BIDS:**

All bid openings are to be conducted as outlined in **ROW-1106-4**, "Opening of Bids." Bid openings are to be public meetings to which bidders and other interested parties are cordially invited. The opening of the bids is to be witnessed by at least two representatives of the Cabinet. As bids are opened, they are recorded on a TC 62-43 form, *Bid Summary (Exhibit 44)*.



**HIGHEST
BIDDER:**

The high bidder for each parcel, whose bid equals or exceeds the appraised value, is to be notified in writing by the district that his or her bid is being recommended to the Finance and Administration Cabinet for approval. His or her deposit will be held in the Transportation Cabinet Trust Account pending the final results of the sale. All other checks of deposit received are to be returned immediately by mail to the bidder with an appropriate explanation.

The high bidder for each parcel, whose bid fails to equal or exceed the appraised value, will be notified in writing that one of the following recommendations is being made to the Finance and Administration Cabinet:

- Ø That the bid did not equal the appraised value and that all bidders will be asked to submit another bid
- Ø That the bid, although not equal to the appraised value, is being recommended for approval
- Ø That the bid, although high, is not sufficiently near the appraised value and that a recommendation is being made to enter into private negotiations for the amount of the appraised value

Once sealed bids are accepted, every effort is to be made to dispose of the property as a result of such sale. When it is determined that the cost of another sale would exceed the difference between the high bid and the property's appraised value, the final recommendation listed above is to be made to the Finance and Administration Cabinet.

On small, insignificant tracts of land that may fail to receive a bid, a recommendation is to be made to enter into private negotiations at the appraised value.

When approved by the Commissioner of Highways/Secretary of the Transportation Cabinet, deeds are prepared and sent to the Office of Legal Services. Upon approval as to form and legality, copies of the bid, appraisal, and deed are sent to the Finance and Administration Cabinet for final approval.

The district is to coordinate delivery of the deed, which is to be recorded in the County Court Clerk's Office. The Division of Right of Way and Utilities is to process money received to the Division of Accounts for credit to the appropriate account.

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PROCEDURES:

Excess or surplus property is to be sold by public auction when it is determined to be in the best interest of the Commonwealth. The determination to sell property by this method is to be based on but not limited to the size, shape, value, and location of the property and the amount of interest shown by the general public in acquiring the property. When the best method of sale is by public auction, qualified employees of the Commonwealth are to conduct the sale if possible. However, if qualified employees are unavailable or if the property is of such a nature that the Cabinet requires professional services, the Cabinet is to enter into a contract with a realtor or auctioneer to conduct the sale.

All sales of excess or surplus property by the Cabinet by public auction are to be made under the procedures outlined here and in **ROW-1503**, "Procedure for Disposal of Excess Property."

ADVERTISING & PROMOTION:

All advertising and promotion of the sale are the responsibility of the district. Each advertisement is to contain the following:

- Ø Notice that the high bidder is required to sign a purchase agreement and post a predetermined deposit
- Ø Notice that the Cabinet can make accommodations for persons with disabilities if given 48 hours' notice prior to date of the auction

ADVERTISEMENT PLACEMENT:

Pursuant to KRS 45A.080(3), the Division of Right of Way and Utilities is to give public notice of an auction as outlined in **ROW-1104**, "Public Notice."

When the district elects to advertise an auction, the advertisement is to be published at least 7 days prior to the date set for public auction.

PURCHASE AGREEMENT:

On the date of sale, at least two representatives of the Cabinet are to be present to assist in handling the sale. The high bidder is required to post a deposit and sign a TC 62-9 form, *Purchase Agreement Public Sale (Exhibit 13)*.

**PURCHASE
AGREEMENT
(cont.)**

The TC 62-9 form is to be sent to the Commissioner of Highways/ Secretary of the Transportation Cabinet for approval. When approved, the deed is prepared and sent along with the TC 62-9 form and appraisal to the Finance and Administration Cabinet for final approval.

DEEDS:

The district is to coordinate delivery of the deed, which is to be recorded in the County Court Clerk's Office. The Division of Right of Way and Utilities is to process money received to the Division of Accounts for credit to the appropriate account.


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	<p><i>Chapter</i></p> <p>SALE & DISPOSAL OF SURPLUS REAL PROPERTY</p>
	<p><i>Subject</i></p> <p>Sale of Bond-Funded Excess/ Surplus Property</p>

PROCEDURES: All sales of excess or surplus property located on bond-funded projects are to be made according to the same procedures previously set out, with all receipts being credited to the appropriate account according to the prevailing bond indenture. Concurrence is to be obtained from the Turnpike Authority of Kentucky prior to such sale.

The chairperson of the Turnpike Authority of Kentucky executes the Deed of Conveyance when title to the property has been transferred to the authority.

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	<p><i>Chapter</i></p> <p>SALE & DISPOSAL OF SURPLUS REAL PROPERTY</p>
	<p><i>Subject</i></p> <p>Credit of Proceeds from Sale of Property</p>

OVERVIEW: Upon receipt, proceeds from the sale of surplus property are submitted through the Division of Right of Way and Utilities to the Division of Accounts, where appropriate credit is given as indicated in the following sections.

FEDERALLY FUNDED PROJECTS: The Division of Accounts credits the federal share of proceeds to projects eligible under Title 23 of the United States Code. The state share is credited to the appropriate account.

BOND-FUNDED PROJECTS: If any portions of the bonds are still outstanding, the Turnpike Authority of Kentucky is credited with 100 percent of the proceeds. After the bonds are paid off, proceeds are to be deposited to the Road Fund.

MAINTENANCE SITES & BUILDINGS: Proceeds from the sale of surplus maintenance sites and related buildings are credited to the appropriate account.

PLAN CHANGES: When right-of-way is conveyed off, the Division of Right of Way and Utilities notifies the Division of Highway Design so that record plans may be revised or otherwise noted. The Finance and Administration Cabinet's Division of Real Properties is to be notified of the deed book and page number of the recorded deed when the transaction is completed.

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	<p><i>Chapter</i></p> <p>SALE & DISPOSAL OF SURPLUS REAL PROPERTY</p>
	<p><i>Subject</i></p> <p>Disposal of State-Owned Lots & Buildings</p>


INSPECTION: When Transportation Cabinet-owned lots or buildings are to be sold or demolished, the Division of Property and Supply Services is to inspect the property and salvage all items of value to the Cabinet.

REVIEW: When Transportation maintenance and repair shops are vacated, the chief district engineer is to submit to the Division of Right of Way and Utilities a recommendation for their disposal. If documents are in order, steps are to be taken to properly dispose of the property and, if necessary, have an appraisal made.

PRIORITY OF DISPOSAL: Any other state or local government agency is to be given first priority to acquire such properties if the intended use is to be in the public interest. If an interest is indicated, the Finance and Administration Cabinet may authorize private negotiations.

SALE OF SURPLUS LOTS: A joint official order signed by the Commissioner of Highways/Secretary of Transportation and the Secretary of the Finance and Administration Cabinet is to be prepared declaring the property surplus and authorizing the method of disposal. Where environmental issues are present, the deed will so reflect.

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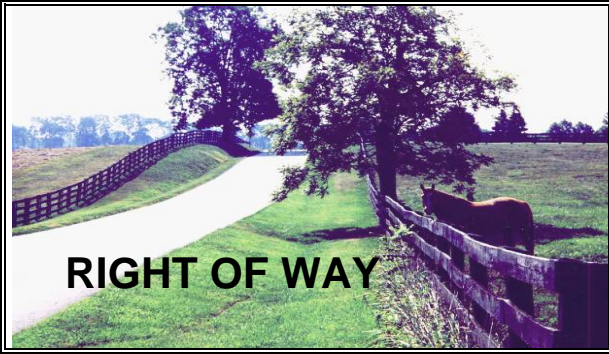
	<p><i>Chapter</i></p> <p>SALE & DISPOSAL OF SURPLUS REAL PROPERTY</p>
	<p><i>Subject</i></p> <p>Surplus Property Sales Records</p>

**SALES
RECORDS:**

Sale files for each parcel of property sold are maintained in the Division of Right of Way and Utilities for at least three years after the date of the sale. After three years, records may be forwarded to the Department for Libraries and Archives for retention.

An inventory of all property sold is to be maintained in the division for future reference. Records of sales for this inventory are to be accumulated on a fiscal-year basis. The Office of Technology is to be provided this information to prepare a computer printout for all properties sold.

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*Chapter*

EXHIBITS

Subject

Forms & Regulations

EXHIBIT NUMBER	TITLE	FORM OR REGULATION NUMBER
Exhibit 01	Right of Way and Real Estate	23 CFR Part 710
Exhibit 02	Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs	49 CFR Part 24
Exhibit 03	Right of Way Cost Estimate	TC 62-203
Exhibit 04	Project Authorization	TC 10-1
Exhibit 05	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (The Uniform Act)	
Exhibit 06	Experience Questionnaire for Fee Appraiser	TC 62-3
Exhibit 07	Property Owner Interview	TC 62-19
Exhibit 08	Appraiser's Certification of Comparable Sales Data	TC 62-22
Exhibit 09	Comparable Sale Data—Residential/Commercial/Industrial	TC 62-20.B
Exhibit 10	Comparable Sale Data—Rural	TC 62-20.C
Exhibit 11	Additional Comparable Sale Data	TC 62-20.D
Exhibit 12	Appraisal Report	TC 62-20.1
Exhibit 13	Appraisal Review	TC 62-87
Exhibit 14	Appraiser Performance Analysis	TC 62-101
Exhibit 15	Record of Contacts	TC 62-77
Exhibit 16	Standard Invoice	TC 31-519
Exhibit 17	Parcel Summary	TC 62-83
Exhibit 18	Memorandum of Understanding	TC 62-83A
Exhibit 19	Reimbursement Request for Incidental Expenses	TC 62-18



EXHIBIT NUMBER	TITLE	FORM OR REGULATION NUMBER
Exhibit 20	Improvement Removal Contract	TC 62-41
Exhibit 21	Rental Agreement	TC 62-26
Exhibit 22	Notice of Excess Purchased	TC 62-85
Exhibit 23	Payment Summary	TC 62-209
Exhibit 24	Project Report	TC 62-75
Exhibit 25	Offer to Purchase (4 Sample Letters)	(none)
Exhibit 26	Condemnation Pay Statement	TC 62-21A
Exhibit 27	Property Owner Opinion Survey	TC 62-90
Exhibit 28	Bid Invitation for Removal of Improvements	TC 62-42
Exhibit 29	Project Summary of Improvements	TC 62-201
Exhibit 30	Notification of Asbestos Abatement/Demolition/Renovation	DEP 7036
Exhibit 31	Specification for Removal of Improvements	TC 62-16
Exhibit 32	Kentucky Overweight/Overdimension Permit	TC 95-19
Exhibit 33	Pre-Improvement Removal Meeting Certification	TC 62-17
Exhibit 34	Rental Record	TC 62-84
Exhibit 35	Grave Data Sheet	TC 62-52
Exhibit 36	Consent and Authorization	TC 62-55
Exhibit 37	Reinterment Agreement	TC 62-64
Exhibit 38	Consent and Release	TC 62-65
Exhibit 39	Deposit Voucher	TC 31-561
Exhibit 40	Application to Purchase State Right of Way	TC 62-8
Exhibit 41	Checklist for Disposal of Surplus Property	TC 62-7
Exhibit 42	Purchase Agreement Public Sale	TC 62-9
Exhibit 43	Invitation for Bids: Sale of Excess Property	TC 62-6
Exhibit 44	Bid Summary	TC 62-43

